

1 TEXAS DEPARTMENT OF TRANSPORTATION  
2 COMMISSION MEETING  
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5

6 Ric Williamson Hearing Room  
7 Dewitt Greer Building  
8 125 East 11th Street  
9 Austin, Texas  
10

11  
12 Thursday,  
13 September 30, 2010  
14 9:04  
15  
16  
17

18 COMMISSION MEMBERS:  
19

20 Deirdre Delisi, Chair  
21 Ted Houghton  
22 Ned S. Holmes  
23 Fred Underwood  
24 William Meadows  
25

26  
27 STAFF:  
28

29 Amadeo Saenz, Executive Director  
30 Steve Simmons, Deputy Executive Director  
31 Bob Jackson, General Counsel  
32 Roger Polson, Executive Assistant to the  
33 Deputy Executive Director

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 52 the department during a study tour to  
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 54 counselors on the East Texas region

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14 bridges on the state highway system (MO)  
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P R O C E E D I N G S

1  
2 MS. DELISI: Good morning. It is 9:04 a.m.  
3 and I call the regular September 2010 meeting of the Texas  
4 Transportation Commission to order. Note for the record  
5 that public notice of this meeting, containing all items  
6 on the agenda, was filed with the Office of the Secretary  
7 of State at 4:46 p.m. on September 22, 2010.

8 As always, before we begin today's meeting,  
9 please take a moment to put your cell phones and other  
10 electronic devices on the silent mode, please.

11 As is custom, we'll open with comments from the  
12 commissioners, and we'll start with Commissioner Meadows.

13 MR. MEADOWS: Thank you, Madam Chair.

14 You know, so often people incorrectly think of  
15 TxDOT as only a bridge and road agency which, of course,  
16 it is the finest one of those in the nation, but it is an  
17 agency that's so much more than that, and one of the  
18 greatest examples that I can think of that I've had the  
19 opportunity to experience in recent times is our ferry  
20 operation. The TxDOT managed ferry systems of Texas  
21 transport over 10 million people annually and over 3  
22 million motor vehicles, which is pretty remarkable.

23 I had the opportunity, was hosted by Howard  
24 Gillespie, who runs our Port Aransas ferry system,  
25 recently and had the opportunity to see how that operates.

1       It's efficient, it's effective, it's such an integral  
2 part of the tourist industry in Texas. I actually had the  
3 opportunity to participate in a man-overboard exercise,  
4 and I was quite concerned as I tried to determine who was  
5 going to have to be the man overboard. Fortunately, it  
6 was not me.

7               But anyway, it's something that we just need to  
8 be aware of, what a diverse, effective, efficient agency  
9 this really is in so many respects. And my appreciation  
10 to the Port Aransas ferry crew for hosting me. Thank you.

11               MR. UNDERWOOD: Glad you elaborated on the  
12 ferry part. When you started off with the ferry, I kept  
13 thinking of our commissioner that said the Road Fairy is  
14 dead.

15               MR. MEADOWS: Well, he's not here.

16               (General laughter.)

17               MR. UNDERWOOD: I know and I thought about that  
18 also. You had me thinking. I'm glad you clarified that.

19               On a serious note, I want to thank the men and  
20 women at TxDOT for all the hard work they've done on the  
21 American Recovery and Reinvestment Act. John is going to  
22 be talking about it later on today. But to the staff and  
23 the people that made it work and went overtime, double  
24 time, all the time, we really appreciate it. And that's  
25 just from the commission, so thank you all.

1 MR. HOLMES: Fred, when you started on that bit  
2 about the fairies, I was getting really nervous.

3 I was also going to mention the fine work that  
4 was done by the staff on the stimulus package. It's a  
5 tremendous task in a very short amount of time to solicit,  
6 analyze, organize, get engineering, drawings, plans,  
7 lettings on \$2.25 billion that just comes very quickly,  
8 and they've done a fantastic job.

9 There has been some press around the country of  
10 some states that have been very slow in implementing their  
11 programs and some that have been very fast, and I think  
12 that what our staff did was take a very measured approach,  
13 implementing some in the maintenance categories that can  
14 be done very quickly, but also employing some of those  
15 funds, quite a lot of those funds, in projects that are  
16 going to change the mobility in the areas where they have  
17 been employed, and I salute the efforts of all the staff  
18 and the partners around the state.

19 Welcome. Thanks.

20 MS. DELISI: Does anyone want to take this  
21 opportunity to speak on behalf of Commissioner Houghton  
22 since he's not here today, on the record?

23 (General talking and laughter.)

24 MS. DELISI: Well, for the record, I offered  
25 and no one took me up on it.

1 I would just like to remind everybody that  
2 registration is open for the Texas Transportation Forum  
3 that will be held from January 3 through 5 here in Austin  
4 at the Hilton. So please make sure you register online  
5 and we look forward to seeing you there.

6 Again, if you wish to address the commission  
7 during today's meeting, please complete a speaker's card  
8 at the registration table in the lobby. To comment on an  
9 agenda item, please complete a yellow card and identify  
10 the agenda item. If it's not an agenda item, we will take  
11 your comments at the open comment period at the end of the  
12 meeting. For those comments, please complete a blue card.

13 Regardless of the color of card, we do ask you to try and  
14 limit your comments to three minutes.

15 Our first item of business today is approval of  
16 the minutes for the August 25 and 26 commission meetings.

17 Members, the draft minutes have been provided in your  
18 briefing materials. Is there a motion to approve?

19 MR. UNDERWOOD: So moved.

20 MR. HOLMES: Second.

21 MS. DELISI: All in favor?

22 (A chorus of ayes.)

23 MS. DELISI: The motion passes.

24 With that, Amadeo, I'm going to hand over the  
25 agenda to you.

1 MR. SAENZ: Thank you, Madam Chair. Good  
2 morning, commissioners. Good morning, everyone.

3 Today's first agenda item is agenda item number  
4 2 which will be presented by Dave Fulton, our Aviation  
5 Division director, and he will present two minute orders.  
6 The first one is award of some federal and state projects,  
7 and the second one is the approval of appointment of some  
8 committee members.

9 MR. FULTON: Thank you, Amadeo, commissioners.  
10 For the record, my name is Dave Fulton, director of the  
11 TxDOT Aviation Division.

12 Item 2(a) is a minute order that contains a  
13 request for grant funding approval for 15 airport  
14 improvement projects. The total estimated cost of all  
15 requests, as shown in Exhibit A, is approximately \$5  
16 million: approximately \$2.9 million in federal funds,  
17 \$1.5 million in state funds, and \$600,000 in local funds.

18 A public hearing was held on August 19 of this  
19 year. No comments were received. We would recommend  
20 approval of this minute order.

21 MS. DELISI: Is there a motion?

22 MR. UNDERWOOD: So moved.

23 MR. HOLMES: Second.

24 MS. DELISI: All in favor?

25 (A chorus of ayes.)

1 MS. DELISI: The motion passes.

2 MR. FULTON: Item 2(b) is a minute order to  
3 reappoint two members of the Texas Aviation Advisory  
4 Committee, Mr. Pete Huff from McKinney, Texas, and Mr.  
5 Robert Bruce from Boerne, Texas, for additional three-year  
6 terms. Both nominees meet the statutory requirements for  
7 service no this committee.

8 Mr. Huff is here and would like to address the  
9 commission.

10 MS. DELISI: Absolutely. Mr. Huff.

11 MR. HUFF: Madam Chairman, fellow  
12 commissioners, good morning. My name is Pete Huff.

13 I kind of have two hats this morning. One is  
14 TxDOT Aviation Advisory Committee which I've been on for  
15 some years, amazing organization. I think the committee  
16 is blessed to have the staff that we do underneath us,  
17 they make us look really good. I have nothing but just  
18 tremendous praise for the way that whole operation has  
19 been run over the years, and as you probably know, there's  
20 a number of retirees that have been key people there for  
21 some time and Dave has been able to begin to replace those  
22 people with quality people and I'm sure he'll see that  
23 through. I would certainly appreciate your vote to  
24 continue my position on that committee.

25 If I could, on another note, I'm the mayor pro

1 tem of McKinney, and I've been through the toll road  
2 project that's gone on, how long, four years now or so.  
3 I'd like to just give you a really quick report. Three  
4 years ago, if you drove from McKinney, Texas to DFW, it  
5 was an hour ten to an hour fifteen. Now it's 35 minutes,  
6 and you can go anywhere in the world from DFW. It's a  
7 tremendous improvement.

8 Not only is that time saving tremendous, but  
9 because of the traffic on that toll road, we're getting US  
10 75 completely rebuilt through most of our entire city,  
11 including interchanges, the Dallas North Toll Road and 75.

12 This is a miracle. I don't know if you guys are good at  
13 miracles all the time, and not all toll roads may be  
14 miracles, but this is one, and I salute you for that.

15 Thank you.

16 MS. DELISI: Thank you.

17 MR. FULTON: That concludes my presentation,  
18 commissioners. I would recommend approval of this minute  
19 order.

20 MS. DELISI: Thank you.

21 MR. HOLMES: So moved.

22 MR. UNDERWOOD: Second.

23 MS. DELISI: All in favor?

24 (A chorus of ayes.)

25 MS. DELISI: The motion passes.

1 MR. SAENZ: Thank you, David, and thank your  
2 staff. I think you all had your own integral part of the  
3 economic stimulus program, and just like the other  
4 programs, the Aviation portion was all obligated. In  
5 fact, we even got an extra job out of it, so good job.  
6 Thanks.

7 Agenda item number 3, commissioners, deals with  
8 Public Transportation, and Eric Gleason will present two  
9 minute orders dealing with our Public Transportation  
10 program.

11 MR. GLEASON: Good morning. For the record,  
12 I'm Eric Gleason, TxDOT director of Public Transportation.

13 Agenda item 3(a) awards approximately 144,000  
14 transportation development credits for capital projects  
15 supporting fleet procurement and facility development.  
16 The Heart of Texas Workforce Board is requesting just over  
17 12,000 development credits to match Federal Job Access  
18 Reverse Commute Program funds to procure vehicles for  
19 employment related services in McLennan and Falls  
20 counties. The Kaufman Area Rural Transportation Program is  
21 requesting almost 44,000 in development credits to also  
22 match Federal JARC Program funds to buy vehicles for new  
23 employment related services in Kaufman County.

24 Texoma Area Paratransit Services is requesting  
25 26,000 development credits to match Federal Non-Urban Area

1 §5311 Program funds to procure replacement vehicles for  
2 services in Fannin, Grayson and Cooke counties. And  
3 finally, West Texas Opportunities is requesting a total  
4 award of 62,000 development credits to match Federal Non-  
5 Urbanized Area §5311 Program funds to assist in facility  
6 development in Big Spring, Andrews and Presidio.

7 We have reviewed each project and determined  
8 their consistency with eligibility requirements for  
9 transportation development credits, potential benefits to  
10 public transportation initiatives and ability to further  
11 the goals of the department. We recommend approval of  
12 this minute order.

13 MS. DELISI: Is there a motion?

14 MR. HOLMES: So moved.

15 MR. UNDERWOOD: Second.

16 MS. DELISI: All in favor?

17 (A chorus of ayes.)

18 MS. DELISI: The motion passes.

19 MR. GLEASON: Agenda item 3(b) revises the  
20 previously approved Fiscal Year 2010 Federal §5310, the  
21 Special Needs of Elderly Individuals and Individuals with  
22 Disabilities Program projects for the Laredo District.  
23 Subsequent to the two previous commission awards for this  
24 program in February and May of 2010, Duval County has  
25 decided to provide transportation services under this

1 program through a coordinated effort with REAL, the Rural  
2 Economic Assistance League. This effort requires all  
3 Fiscal Year 2010 funds originally awarded to Duval County  
4 need to be awarded to REAL to ensure continued mobility  
5 for elderly individuals and individuals with disabilities  
6 throughout Duval County.

7 We recommend approval of this minute order.

8 MS. DELISI: Is there a motion?

9 MR. HOLMES: So moved.

10 MR. UNDERWOOD: Second.

11 MS. DELISI: All in favor?

12 (A chorus of ayes.)

13 MS. DELISI: The motion passes.

14 MR. GLEASON: Thank you.

15 MS. DELISI: Thanks, Eric.

16 MR. UNDERWOOD: And Eric, on a personal note,  
17 thank you again for all you do. I appreciate it. The  
18 commission really appreciates your hard work.

19 MR. SAENZ: Thank you, Eric.

20 Agenda item number 4, commissioners, Bill  
21 Glavin, Rail Division director, will present a minute  
22 order concerning passenger rail service in Cooke, Denton  
23 and Tarrant counties.

24 MR. GLAVIN: Good morning, commissioners. For  
25 the record, my name is Bill Glavin. I'm TxDOT's director

1 of the Rail Division.

2 This minute order authorizes the department to  
3 provide up to \$2.1 million to the National Passenger  
4 Railroad Corporation, Amtrak, to fund the Heartland Flyer  
5 passenger rail service. The Heartland Flyer, a state-  
6 supported route, provides daily rail service over BNSF's  
7 railway line between Fort Worth and Oklahoma City, with an  
8 additional Texas stop in Gainesville.

9 Since the Heartland Flyer Route was not part of  
10 the basic Amtrak system designated in 1971, the State of  
11 Oklahoma funded this service through a contract with  
12 Amtrak to cover operating losses from 1999 through  
13 September 2006. In Fiscal Year 2007, the department began  
14 partnering with Oklahoma for continued operations. Last  
15 year, Fiscal Year 2010, both Texas and Oklahoma each  
16 committed \$1.59 million to subsidize Amtrak's operating  
17 losses on the line.

18 Amtrak has estimated the subsidy for Texas,  
19 with fuel and host railroad costs, for Fiscal Year '11 to  
20 be \$2.1 million. Oklahoma plans to provide its share,  
21 also \$2.1 million for the continuation of this service.

22 Staff recommends the approval of this minute  
23 order. I'd be glad to entertain any questions.

24 MS. DELISI: Are there any questions?

25 MR. HOLMES: So moved.

1 MR. UNDERWOOD: Second.

2 MS. DELISI: All in favor?

3 (A chorus of ayes.)

4 MS. DELISI: The motion passes.

5 MR. SAENZ: Thank you, Bill.

6 Agenda item 5 deals with the promulgation of  
7 administrative rules. 5(a) deals with final adoption of  
8 rules and, and 5(a)(1), James Bass will present a minute  
9 order on proposed amendments to rules for final adoption  
10 on Chapter 6, the State Infrastructure Bank.

11 MR. BASS: Good morning. For the record, I'm  
12 James Bass, chief financial officer at TxDOT.

13 This particular minute order would provide for  
14 final adoption of proposed amendments to the rules that  
15 administer the government and managing of the State  
16 Infrastructure Bank, primarily in anticipation of the  
17 receipt of the billion dollars of Proposition 12 Bond  
18 proceeds for additional capitalization of that.

19 Just a quick status on that appropriation. We  
20 were required to submit a plan to the LBB to have them  
21 approve that. We submitted that at the end of July, and  
22 as of our discussion today, we have not received full  
23 approval for that \$1 billion, so we're still waiting on  
24 that approval, however, we wanted to move forward with the  
25 amendments to the rules so we'd be ready to go when those

1 came.

2 The proposed draft rules were published in the  
3 Texas Register. We did receive comments, and my guess is  
4 that about half of those we made amendments to in response  
5 of. We did not make amendments in response to all of the  
6 comments we received. If you'd like, I can go over those  
7 briefly. They are delineated in the preamble of the  
8 rules.

9 And other than that, I would be happy to answer  
10 any questions, or staff would recommend your approval.

11 MR. MEADOWS: One quick question. I know in  
12 the narrative a number of the members of the advisory  
13 committee actually abstained and did not vote.

14 MR. BASS: Correct.

15 MR. MEADOWS: What do we need to know about  
16 that?

17 MR. BASS: I'm not sure why they chose to  
18 abstain. There was one that voted yes but had an  
19 objection to one particular issue that they then commented  
20 during the public comment period. The other ones chose to  
21 abstain. I did not get the impression that they were  
22 against the proposed rules. We did not have any no votes,  
23 but for whatever reason, some of the entities that were on  
24 the advisory committee chose to abstain. I do not feel it  
25 was because they disagreed with the proposed rules.

1 MR. UNDERWOOD: James, what do you mean by you  
2 haven't received full approval? Elaborate, please.

3 MR. BASS: In the appropriations bill, it  
4 appropriated \$1 billion of Proposition 12 Bond proceeds  
5 for the SIB, however, also in the appropriations bill  
6 there was a rider that said none of the Proposition 12  
7 Bond proceeds may be spent by TxDOT until a plan is  
8 submitted on how you would utilize those proceeds and the  
9 LBB and the Governor's Office approve that plan.

10 You're probably familiar with the \$2 billion of  
11 projects of design-bid-build projects that we've already  
12 started. That plan had been submitted and had been fully  
13 approved, and that's why we're moving forward on those  
14 projects.

15 The billion dollars for the SIB, we sent after  
16 the draft rules were published in the Texas Register, we  
17 submitted that plan as required by the rider, it was near  
18 the end of July, and said our plan for the utilization of  
19 this billion dollars of Prop 12 would be in accordance  
20 with these draft rules. We have not received a response  
21 to that request yet, and until we do, we do not have full  
22 appropriation technically legally, therefore we cannot go  
23 issue a billion dollars of bond proceeds to deposit into  
24 the Prop 12 SIB until we receive that approval.

25 MR. UNDERWOOD: So basically we just don't have

1 approval, period. You said full approval and that's what  
2 confused me.

3 MR. BASS: Okay. Sorry. I think the  
4 legislature, what I meant by that, it's in the  
5 appropriations bill, I think there's certainly the intent  
6 for it to be approved, however it required that we submit  
7 a plan which we have done, we have not yet received  
8 approval of that plan.

9 MR. UNDERWOOD: All right. Thank you.

10 MS. DELISI: Are there any other questions?  
11 No? Okay.

12 Are you done?

13 MR. BASS: I am done.

14 MS. DELISI: Okay. So with that, is there a  
15 motion?

16 MR. HOLMES: So moved.

17 MR. UNDERWOOD: Second.

18 MS. DELISI: All in favor?

19 (A chorus of ayes.)

20 MS. DELISI: The motion passes.

21 MR. BASS: Thank you.

22 MR. SAENZ: Thank you, James. Are those  
23 Longhorns on that tie? Good job. We need all the spirit  
24 we can get.

25 Agenda item number 5(a)(2) deals with final

1 adoption of rules of Chapter 31, Public Transportation,  
2 and Eric Gleason will come back and make that  
3 presentation.

4 MR. GLEASON: Again, I'm Eric Gleason, TxDOT  
5 director of Public Transportation.

6 Agenda item 5(a)(2) recommends final adoption  
7 of amendments to Chapter 31.36 of the Texas Administrative  
8 Code concerning the distribution of funds to public  
9 transportation providers. These amendments will clean up  
10 some outdated fiscal year references, they will revise  
11 what is commonly referred to as the commission  
12 discretionary program for Non-Urbanized Area federal funds  
13 to be no more than 10 percent of the available annual  
14 federal apportionment, and they will codify the funding  
15 allocation process that has been used the past two years  
16 under the discretionary allocation, making it a stand-  
17 alone allocation. This process has used each agency's  
18 proportional share of reported revenue miles as the basis  
19 for the allocation.

20 Limiting the commission discretionary award  
21 amount will provide more funds to be granted through the  
22 annual formula process and add greater certainty to  
23 projected funding amounts for providers from one year to  
24 the next. Using revenue miles as a basis for the  
25 additional allocation maintains a universally accepted

1 practice in place for the previous two fiscal years.

2 A public hearing was held on August 6, 2010.  
3 No comments on the proposed amendments were received at  
4 the hearing and no written comments were received by the  
5 department during the comment period ending August 9,  
6 2010.

7 The Public Transportation Advisory Committee  
8 met on September 8, 2010 and by motion recommends to the  
9 commission all of the amendments in the allocation formula  
10 that you have before you today.

11 We recommend your approval of this minute  
12 order.

13 MS. DELISI: Is there a motion?

14 MR. UNDERWOOD: So moved.

15 MR. HOLMES: Second.

16 MS. DELISI: All in favor?

17 (A chorus of ayes.)

18 MS. DELISI: The motion passes.

19 MR. GLEASON: Thank you.

20 MS. DELISI: Thanks, Eric.

21 MR. SAENZ: Thank you, Eric.

22 Agenda item 5(b), commission, deals with  
23 proposed adoption of rules. 5(b)(1), Mark Tomlinson will  
24 make a presentation to you on proposed rules dealing with  
25 the leasing of right of way.

1 MR. TOMLINSON: Good morning, commissioners,  
2 Mr. Saenz. My name is Mark Tomlinson, director of the  
3 Texas Turnpike Authority Division of TxDOT.

4 This minute order proposes the adoption of new  
5 sections concerning the leasing of highway right of way  
6 for an alternative type of transportation facility. As we  
7 all know, freight traffic is growing dramatically in  
8 Texas, leading to increased highway congestion, air  
9 emissions and infrastructure maintenance costs. The new  
10 subchapter allows the department to lease unused right of  
11 way to entities to construct and operate an alternative  
12 freight transportation facility that emits fewer  
13 pollutants and reduces the number of trucks on our  
14 roadways.

15 The new sections create a process for the  
16 department to receive proposals, to lease various sections  
17 of right of way necessary to construct their  
18 transportation facilities. The department will be able to  
19 select one or more proposals that offer the best value to  
20 the state.

21 Comments on the proposed new sections will be  
22 accepted until five o'clock on November 15, 2010. I'll be  
23 happy to answer any questions you have, but staff would  
24 recommend your approval of the minute order.

25 MS. DELISI: Is there a motion?

1 MR. UNDERWOOD: So moved.

2 MR. HOLMES: Second.

3 MS. DELISI: All in favor?

4 (A chorus of ayes.)

5 MS. DELISI: The motion passes.

6 MR. TOMLINSON: Thank you.

7 MR. SAENZ: Thank you, Mark.

8 Agenda item 5(b)(2), Doris Howdeshell will  
9 present a minute order on proposed rules dealing with  
10 Chapter 23, Travel Information.

11 MS. HOWDESHELL: Good morning, commission and  
12 Chair Delisi. I'm delighted to be here today. For the  
13 record, my name is Doris Howdeshell and I'm the director  
14 of the Travel Information Division here at TxDOT.

15 Today the minute order before you concerns  
16 Chapter 23 of our Administrative Code. The Transportation  
17 Code, Chapter 204 directs the department to publish the  
18 state's travel literature, including the Texas official  
19 highway map, and to operate travel information centers.

20 The rules before you today offer a few changes  
21 to items that are included in our Texas State Travel  
22 Guide, and how a municipality or a community can be placed  
23 on the official highway map. Those specific details are  
24 delineated in the preamble to the changes. And then we  
25 also have a change in regard to items that can be

1 distributed at a travel information center in regard to a  
2 single piece of literature.

3 I'll be glad to answer any questions that you  
4 have, and we recommend approval of this minute order  
5 proposing these changes.

6 MS. DELISI: Any questions? Is there a motion?

7 MR. UNDERWOOD: So moved.

8 MS. DELISI: And a second?

9 MR. HOLMES: Second.

10 MS. DELISI: All in favor?

11 (A chorus of ayes.)

12 MS. DELISI: The motion passes.

13 MS. HOWDESHELL: Thank you.

14 MR. SAENZ: Thank you, Doris.

15 Moving on to agenda item number 6, Jim Randall  
16 will present a minute order concerning the adoption of the  
17 Fiscal Year 2011-2014 Statewide Transportation Improvement  
18 Program.

19 MR. RANDALL: Thank you, Amadeo. My name is  
20 Jim Randall, director of the Transportation Planning and  
21 Programming Division.

22 As a condition to securing federal funds for  
23 transportation projects under either Title 23 United  
24 States Code or the Federal Transit Act, each designated  
25 metropolitan planning organization and the state are

1 required to develop a transportation improvement program,  
2 or TIP. According to federal requirements, metropolitan  
3 planning organizations develop their TIPs in cooperation  
4 with the state and affected transit operators. These TIPs  
5 must be updated at least once every four years. The  
6 individual TIPS from each MPO, along with federally funded  
7 projects in those areas of the state that are not included  
8 in an MPO area are incorporated in the Statewide  
9 Transportation Improvement Program, or STIP.

10 Now I'd like to take this opportunity to  
11 discuss the relationship between the various Planning and  
12 Programming documents and time frames leading up to the  
13 development of the STIP which is illustrated on the slide  
14 behind you.

15 At the bottom of the pyramid you see the  
16 Statewide Long-Range Transportation Plan. This document  
17 is a comprehensive statewide multimodal transportation  
18 plan that covers a period of at least 24 years and serves  
19 at the defining vision for the state's transportation  
20 system and services. The statewide plan integrates  
21 pertinent information from the department's rail and  
22 aviation plans, as well as transit statistics, the Port  
23 Capital Program and other documents such as the 2030  
24 Report and corridor studies, to form a single statewide  
25 multimodal plan.

1           Closely aligned with the Statewide Plan is the  
2 department's Strategic Plan that defines the department's  
3 missions and identifies short-term goals, objectives and  
4 strategies that will be undertaken to address the state's  
5 multimodal transportation needs. It also defines a set of  
6 agency-level performance measures for tracking progress  
7 toward achieving the agency's goals. The goals and  
8 performance measures in the 2011-2015 Strategic Plan have  
9 been incorporated in the current Statewide Plan.

10           Next is the Metropolitan Transportation Plan.  
11 This plan is a long-range plan developed by each MPO for  
12 areas within its boundaries that covers a period of at  
13 least 20 years and contains a priority based listing of  
14 projects that are expected to be developed within the  
15 financial constraint of forecasted state, federal and  
16 local funding levels.

17           Next is the UTP, or the Unified Transportation  
18 Program, which is a ten-year financially constrained  
19 program developed by the department in partnership with  
20 the MPOs that represents an intermedidate time frame in  
21 the statewide project development process. The UTP  
22 includes all the projects covered in the four-year STIP  
23 plus those projects that the department anticipates that  
24 can proceed to letting within the next six years.

25           As mentioned earlier, the TIP is a short-range

1 program developed by each MPO in cooperation with the  
2 department and public transportation operators that covers  
3 a four-year period. It contains a prioritized listing of  
4 projects proposed for state, federal and local funding in  
5 a metropolitan area and is consistent with the  
6 metropolitan transportation plan. A project's inclusion  
7 the TIP generally represents a commitment that it is  
8 programmed for implementation in the near term.

9 Finally, the STIP is developed by the  
10 department as a compilation of the MPO TIPs and rural  
11 TIPs. The STIP identifies a list of projects to be  
12 implemented statewide with regionally available funds over  
13 a four-year period. So that gives you, hopefully, a  
14 snapshot or puts in perspective where the STIP is within  
15 the planning process.

16 Continuing on with the minute order, in a  
17 letter dated October 4, 2005, Governor Perry delegated the  
18 power and responsibility regarding the STIP to the  
19 commission or its designee. On July 23, a public hearing  
20 notice to receive comments on the proposed 2011-2014 STIP  
21 was posted in the Texas Register. At the time the hearing  
22 notice was published, a copy of the proposed STIP was made  
23 available for view at TxDOT district offices, at the  
24 Planning and Programming Division office, and on the  
25 department's website. Public notice of availability was

1 also sent to each metropolitan planning organization and  
2 other interested parties.

3 The public hearing was held in Austin on August  
4 24 and comments were received through September 6. No  
5 oral or written comments were received.

6 The STIP is consistent with the Strategic Plan  
7 and the Unified Transportation Program and meets all the  
8 requirements of Title 43, Texas Administrative Code,  
9 Sections 15.7 and 15.8 and corresponding federal rules and  
10 regulations.

11 With your approval of this minute order, the  
12 STIP will be adopted and forwarded to FHWA for their  
13 approval. Also, the executive director will be authorized  
14 to sign all necessary certifications required by federal  
15 regulations.

16 Staff recommends your approval of this minute  
17 order.

18 MS. DELISI: Are there any questions?

19 MR. HOLMES: So moved.

20 MR. UNDERWOOD: Second.

21 MS. DELISI: All in favor?

22 (A chorus of ayes.)

23 MS. DELISI: The motion passes.

24 MR. SAENZ: Thank you, Jim.

25 Jim will now present agenda item 6(b) dealing

1 with a project in Kinney County that is part of the Border  
2 Colonia Access Program.

3 MR. RANDALL: In 2001, the legislature  
4 established a \$175 million program to provide financial  
5 assistance for Border Colonia access roadway projects.  
6 The department distributed the funds to the eligible  
7 counties in three program calls. This minute order  
8 approves a transfer of a portion of the non-competitive  
9 funds that Kinney County received from the third program  
10 call.

11 Title 43, Texas Administrative Code, Section  
12 15.105 provides that a county may use unexpended funds  
13 from a project on any other commission-selected Colonia  
14 project. Kinney County has requested approval to transfer  
15 \$107,142.51 of their non-competitive funds from the  
16 Spofford Colonia project to the Brackettville Colonia  
17 project.

18 Staff recommends approval of Kinney County's  
19 request.

20 MS. DELISI: Is there a motion?

21 MR. HOLMES: So moved.

22 MS. DELISI: How about a second?

23 MR. MEADOWS: Second.

24 MS. DELISI: All in favor?

25 (A chorus of ayes.)

1 MS. DELISI: The motion passes.

2 MR. SAENZ: Thank you, Jim.

3 Agenda item number 7 deals with toll roads.  
4 7(a), Mark Tomlinson will present the report of the actual  
5 traffic and revenue for the Central Texas Turnpike System.

6 MR. TOMLINSON: Again, my name is Mark  
7 Tomlinson, director of the Turnpike Authority Division.

8 This minute order accepts the report of actual  
9 traffic and revenue for the Central Texas Turnpike System  
10 as of August 31, 2010, as required by our indenture of  
11 trust. The report compares current traffic and revenue  
12 data with data from the prior fiscal year, as well as  
13 projections from the 2002 traffic and revenue study.

14 In the year 2010, the CTTS system generated  
15 more than 78 million transactions and \$66 million in  
16 revenue. This revenue exceeded the 2002 projections by  
17 10.8 percent, and exceeded the prior year by 12 percent.

18 I'll be happy to answer any questions you might  
19 have, and staff recommends your approval of the minute  
20 order.

21 MS. DELISI: Is there a motion?

22 MR. HOLMES: So moved.

23 MR. UNDERWOOD: Second.

24 MS. DELISI: All in favor?

25 (A chorus of ayes.)

1 MS. DELISI: The motion passes.

2 MR. TOMLINSON: Thank you.

3 MR. SAENZ: Thank you, Mark.

4 Agenda item 7(b), John Munoz will present a  
5 minute order authorizing us to enter into a direct  
6 agreement with NTTA concerning the 161 project.

7 MR. MUNOZ: Good morning. For the record, I'm  
8 John Munoz, deputy director of the Finance Division.

9 Item 7(b) authorizes the executive director to  
10 enter into the direct agreement with the NTTA, North Texas  
11 Tollway Authority, and the trustee under the trust  
12 agreement with changes as the executive director may  
13 approve. In addition, the executive director is  
14 authorized to enter into any other necessary agreements in  
15 connection with the NTTA's financing of the State Highway  
16 161 project, including the TIGER grant agreement, the  
17 design-build assignment agreement, and the continuing  
18 disclosure agreement.

19 Just to give you a quick status on where we are  
20 with regards to the negotiations with the TIFIA office and  
21 with regards to the loan, TxDOT has worked closely with  
22 the North Texas Tollway Authority and TIFIA and has  
23 reached a fair position on all major issues related to the  
24 loan except for TxDOT's ability to retain its rights or  
25 remedies as a controlling lender if there is a bankruptcy-

1 related event for the NTTA system, and in addition, how  
2 TIFIA and TxDOT will cooperate in exercising its remedies  
3 for NTTA defaults under the various loan documents.

4 TxDOT continues to work with TIFIA to close out  
5 these remaining major issues, and I expect the  
6 negotiations to be completed, either successfully or  
7 unsuccessfully, within the next week.

8 Approval of this minute order will facilitate a  
9 financing of the 161 project by the end of October. Staff  
10 recommends your approval, and I would be glad to answer  
11 any questions you have.

12 MS. DELISI: Are there any questions? Go  
13 ahead.

14 MR. HOLMES: John, how will the staff  
15 resolution of the remaining items be communicated back to  
16 the commission?

17 MR. MUNOZ: Mr. Bass will brief the  
18 commissioners' aides as needed on a one-on-one basis of  
19 any final outcome on the TIFIA loan negotiations.

20 MR. MEADOWS: I just want to make a comment for  
21 the record. I'm very concerned, having worked through a  
22 process with the NTTA, in a true partnership fashion, to  
23 be in a position now to actually deliver this  
24 infrastructure, 161 in combination with the Southwest  
25 Parkway/Chisholm Trail project, to have TIFIA be at a

1 point where clearly there is a lack of cooperation, lack  
2 of understanding of the importance and significance of  
3 this partnership but also the importance and significance  
4 of the infrastructure. And I really certainly hope that  
5 they can realize and recognize the reasonableness of our  
6 position and the effort that we have put forth to address  
7 their concerns, and I certainly hope we can reach a  
8 reasonable conclusion and resolution to the issue.

9 MR. HOLMES: Just one last question, and I know  
10 this might be difficult to answer, but in the event that  
11 you're unable to negotiate an acceptable agreement with  
12 TIFIA, is there a way to accomplish this project without  
13 TIFIA?

14 MR. MUNOZ: Yes, there is.

15 MS. DELISI: Thanks, John.

16 If there are no other questions, is there a  
17 motion?

18 MR. HOLMES: So moved.

19 MR. MEADOWS: Second.

20 MS. DELISI: All in favor?

21 (A chorus of ayes.)

22 MS. DELISI: The motion passes.

23 MR. SAENZ: Thank you, John.

24 And commissioners, as we move forward as things  
25 progress, should we need to come back, we'll come back and

1 bring a minute order before the commission to get final  
2 approval on any of the changes, but they'll be discussed  
3 individually with you before then.

4 Moving on to agenda item number 8, John will  
5 present a minute order dealing with our pass-through toll  
6 projects.

7 MR. BARTON: Thank you, Director Saenz. And  
8 good morning, Madam Chair and commissioners. For the  
9 record, my name is John Barton, and as always, I do have  
10 the distinct pleasure of serving this state as the  
11 assistant executive director for Engineering Operations  
12 her at the Texas Department of Transportation.

13 The minute order before you -- and I do have a  
14 few slides to show you -- would authorize the department  
15 to execute a pass-through toll agreement with public  
16 entities that have put forward proposals under the  
17 February 2010 Pass-Through Toll Program call for projects  
18 that were conditionally selected by you in a previous  
19 action.

20 This call for projects was required under a  
21 rider to our Appropriations Act and was issued between  
22 March and May of 2010. You have previously selected for  
23 final execution nine pass-through toll agreements under  
24 this call that were valued at approximately \$214 million,  
25 and also authorized the staff to continue negotiations

1 with four additional projects that are before you this  
2 morning. We have successfully negotiated the value of  
3 those projects and terms with each of those entities, and  
4 a summary of that is provided as Exhibit A to this minute  
5 order.

6 I wanted to briefly point out where we are on  
7 the status of funding for projects. It's shown on this  
8 slide which was not provided in your packet, but as  
9 required under the rider to our Appropriations Act, in  
10 Fiscal Year 2010 and 2011, the department must enter into  
11 approximately \$282 million worth of pass-through toll  
12 projects. Under the previous 2010 awards, those were  
13 valued at approximately \$224 million, \$214 million of  
14 those being through this previous call and an additional  
15 \$10 million pass-through project with the community of El  
16 Paso for one of the Recovery Act funded projects. That  
17 would leave an available balance of approximately \$56  
18 million, as shown on that slide.

19 We have approximately \$127 million of  
20 additional projects that we've negotiated out under this  
21 call, and staff is recommending that we move forward with  
22 all of those projects. They are of great value to their  
23 communities and I think of extreme benefit to the state,  
24 as well as a tremendous financial benefit to us as those  
25 communities are funding the vast majority of those

1 projects. If the commission agrees to do so, that would  
2 mean that our call for projects under the 2011 call would  
3 be adjusted to approximately \$211 million in value.

4 So this slide just shows simply those four  
5 projects that are before you today. I'll be happy to  
6 brief you on those if you would like, but real quickly:

7 One is in North Texas with the Council of  
8 Governments there to do some HOV and managed lanes  
9 improvements on Interstate 30 on a corridor that's been  
10 expanded and has the capacity and the pavement, we just  
11 simply need to install the correct barriers and monitoring  
12 devices;

13 With the City of Temple to construct  
14 improvements along Loop 363, a very important project for  
15 their community but also for the state in that it will be  
16 carrying a great deal of traffic as we continue to improve  
17 Interstate 35 and get to the point of expanding I-35  
18 through the Temple community;

19 And then with Hidalgo County Regional Mobility  
20 Authority for some improvements on US 281 that would  
21 support crossing traffic between Texas and Mexico at one  
22 of our most important and heavily traveled border  
23 crossings for trade;

24 And then lastly, a project on FM 1171 in Denton  
25 County that would provide for this expansion of an

1 existing two-lane rural roadway to an urban facility to  
2 support the great improvements that have been made in  
3 terms of development in the communities of the greater  
4 Denton area.

5           Again, these would total just under \$127  
6 million, and staff would recommend your approval of this  
7 minute order which would authorize us to enter into final  
8 agreements with these communities, and I'll be happy to  
9 answer any questions you may have at this time.

10           MS. DELISI: Are there any questions? Hold on.

11           I've got one person signed up. If there are no  
12 questions, then I'd like to call up Mayor Jones.

13           MAYOR JONES: Good morning, Chair Delisi,  
14 commissioners, Director Saenz. Thank you for giving us  
15 the opportunity to speak. Again, my name is Bill Jones,  
16 mayor of the City of Temple.

17           I come before you today with the city manager,  
18 David Blackburn, to express support for this item, but  
19 also to say thank you to many people who have worked on  
20 this project. This project has been in the works for 25  
21 years. We have made several delegation appearances before  
22 this commission and other commissions in years past, we've  
23 worked with different administrations, different executive  
24 directors, and we appreciate the perseverance from the  
25 commission's side to continue to work with us and the

1 staff's side.

2 I'd like to personally express appreciation to  
3 Director Saenz, to Mr. John Barton, and Richard Skopik,  
4 our district engineer, and Kevin Dickey and all of their  
5 staff that have worked together to help bring this to this  
6 point today.

7 The Temple City Council approved this at our  
8 last meeting, and so we are ready to move forward, pending  
9 your approval of the pass-through financing today.

10 I'd also like to recognize Ralph Gower, who is  
11 here representing Senator Troy Frasier, and express  
12 appreciation to the senator for his many years of support,  
13 as well as our current state representative, Ralph  
14 Sheffield, and of course, I would be remiss if I did not  
15 express appreciation for the many years of support and  
16 continued support from our former state representative,  
17 Diane Delisi.

18 It has taken everyone's effort to make this  
19 possible. This is, as Mr. Barton said, a very important  
20 project for our community. We believe it will be a very  
21 important project for statewide mobility in Texas as I-35  
22 is expanded through our community in the years to come.

23 I'd also like to express appreciation to  
24 Annette Shepherd, who is here. She's the director of our  
25 MPO in the Killeen-Temple area, and they, again, have

1 worked with us extensively over the years.

2 So appreciation to each and every one of you,  
3 to all of the staff, to the great TxDOT personnel who have  
4 helped us through this process. And again, we come before  
5 you today asking for your support of this item and  
6 appreciate all the efforts that you've put forward. Thank  
7 you.

8 MS. DELISI: Thanks, Mayor.

9 MS. DELISI: So is there a motion?

10 MR. UNDERWOOD: So moved.

11 MR. HOLMES: Second.

12 MS. DELISI: All in favor?

13 (A chorus of ayes.)

14 MS. DELISI: The motion passes.

15 MR. SAENZ: Agenda item number 9, John will  
16 present a minute order dealing with the American Recovery  
17 and Reinvestment Act, or Economic Stimulus Program, and  
18 this, I guess, will tie all loose ends to ensure that all  
19 our money is obligated.

20 MR. BARTON: Yes, sir. Thank you, Director  
21 Saenz. Again for the record, my name is John Barton, and  
22 I do have a brief report to you on the American Recovery  
23 and Reinvestment Act, and then a recommendation on the  
24 minute order that is before you.

25 As you will recall, the American Recovery and

1 Reinvestment Act was initiated just about 18 months ago,  
2 and has been noted by the commissioners this morning,  
3 staff has been working very hard to implement the projects  
4 that not only you but the MPOs from across the state have  
5 selected for funding under this package.

6 I believe that we have been able to advance  
7 many important transportation projects under the Highway  
8 and Bridge Program. Some of those are as grand as the DFW  
9 Connector, the single largest Recovery Act funded project  
10 under the Highway and Bridge Program in the nation. You  
11 committed \$250 million to that, a tremendous benefit to  
12 that project and the to the North Texas community as well  
13 as the State of Texas as a whole. We were also able to  
14 move forward with many roadway maintenance and  
15 preservation projects, as well as bridge reconstruction  
16 and rehabilitation projects, and in doing so, have  
17 committed and obligated the full \$2.25 billion that was  
18 allocated for highways and bridges here in Texas.

19 To date, we've spent just over \$850 million of  
20 those in contractor payments on 648 projects that are  
21 either underway or completed, 279 of those projects have  
22 been completed, and almost 10,300 people have had the  
23 opportunity to either obtain a new job or retain the job  
24 they had under this program. So certainly a great benefit  
25 to the State of Texas.

1           As you know, the Recovery Act also provided  
2 funding for transit services. The vast majority of that  
3 in Texas went to our larger services like Metro and  
4 Capital Metro and DART in the larger communities of the  
5 state, but on the rural transit side, Eric Gleason and  
6 Kelly Kirkland and their staff worked very hard with our  
7 rural transit providers and small urban providers to  
8 develop 80 grants, 27 of which have been completed.

9           As you can see, the value of that was  
10 approximately \$50 million. \$31 million of that has  
11 already been paid out in services that have been provided  
12 and products that have been purchased, and almost 300,000  
13 hours of job opportunities were provided through this  
14 through the end of August. So again, a great benefit to  
15 the state.

16           Commissioner, did you have a question at this  
17 time?

18           MR. HOLMES: I do but you can keep going.

19           MR. BARTON: Okay. I was just going to cover  
20 the other programs.

21           In the aviation arena, Dave Fulton, Amy  
22 Slaughter, Karen Weideman and others in his staff have  
23 done a great job of moving forward with seven different  
24 projects in the State of Texas. I've footnoted the seven  
25 to let you know that the original program that was

1 provided to us were six projects selected b the Federal  
2 Aviation Administration for funding. The total value of  
3 those projects was just over \$17-1/2 million. To date,  
4 we've paid out about \$9.6 million to contractors for that  
5 work and have completed three projects, and for all  
6 intents and purposes, one other project is complete as  
7 well.

8 The footnote is just to share with you that as  
9 those projects were bid, there was an underrun on those  
10 projects, and because it was a grant program, that money  
11 was given back to the FAA. They recently notified us on  
12 September 10 that they were going to allow us to use that  
13 \$2.4 million, approximately, that was our underrun back on  
14 one additional project here in Texas, a project on an  
15 airport in the Killeen area. So the full \$17-1/2 million  
16 will be spent on projects here in Texas and we're very  
17 proud of that, and again, that generated about 84,000 man  
18 hours of job opportunities through this program through  
19 the end of August.

20 We also were very blessed to get some grants  
21 for some rail and ferryboat operations and other modes of  
22 transportation that are often not talked about, but I  
23 wanted to just briefly update you on that. We did receive  
24 a \$7.2 million grant for a new 28-car ferry in the Port  
25 Aransas ferry system that is managed out of our Corpus

1 Christi District, and Howard Gillespie and his staff down  
2 there in Port Aransas in the ferry operations, working  
3 with our contractor and architect, have designed a very  
4 nice new boat that is currently under construction. About  
5 \$3 million has been paid to the fabricator of that new  
6 boat. And they have worked to also secure additional  
7 replacement parts to be able to keep that maintained more  
8 efficiently and in service more often, and we will consume  
9 the entire grant of \$7.2 million.

10 As you know, we also received a \$4 million  
11 grant for some work on high speed passenger rail services,  
12 primarily along the Heartland Flyer route of Amtrak  
13 services. I believe to date we haven't spent those  
14 monies, they have been obligated, but we are currently  
15 working with the rail company to get that project and  
16 those services underway.

17 So as Director Saenz mentioned, we have reached  
18 the finish line, for all intents and purposes. We do have  
19 a lot of work underway but the obligation opportunity has  
20 closed. Officially, it doesn't close by law until today,  
21 but the federal system was closed out on Monday, September  
22 27, and I'm proud to report to you that last Thursday all  
23 of our obligations were made and into the computer system  
24 and authorized by the Federal Highway Administration, so  
25 all funds that were allocated to Texas have been

1 obligated.

2 We worked very closely with our district staffs  
3 and our divisions to verify all the costs on every project  
4 to determine if any money would be left over from any of  
5 those, remove it from those projects now and re-obligate  
6 it to additional projects which involves a minute order  
7 that is before you today.

8 I do want to be clear, there is a limited  
9 opportunity to re-obligate unused funds if that happens  
10 into the future, but we don't want to have to take  
11 advantage of that opportunity. I could explain it to you  
12 but I'm sure it's more details than you would like. I  
13 would just let you know that we don't plan to come back to  
14 you with any additional minute orders, but if it is  
15 necessary, there is a limited opportunity to do that.

16 Before I recommend action on the minute order  
17 that's before you, I would just like to take an  
18 opportunity to share that based on Director Saenz's  
19 direction to staff to work as One DOT and to cooperatively  
20 work with one another to deliver programs and projects  
21 across the state, I think that the Recovery Act has been  
22 perhaps the best embodiment of that philosophy that I've  
23 been a part of and experienced.

24 Through the leadership of people like Mark  
25 Marek and Larry Tegtmeyer, the districts and divisions

1 rallied together to identify a program and put it out for  
2 you. Our district engineers, working with David Casteel,  
3 under his leadership, did work with their staffs to not  
4 only identify those projects but get them designed and  
5 move them forward to construction and oversee them now.

6 Here in Austin, people like Dianna Noble and  
7 Tom Beaman and Maria Burke worked with Ken Barnett over in  
8 the Construction Division to keep the districts' projects  
9 moving forward and going through the process. I've  
10 already mentioned Amy Slaughter over at the Aviation  
11 Division, Kelly Kirkland at our Public Transportation  
12 Division. Robin Ayers has done a yeoman's job of keeping  
13 our government activities flowing back and forth between  
14 the Governor's Office as well as our congressional  
15 delegation. Steve Simmons has been the lead for us with  
16 the Governor's Office throughout this process.

17 A lot of people, and any time you do this, you  
18 forget people, and I should have never started this, but  
19 Robert Ramirez and our Finance group has worked very well  
20 with us as well. Barry Cogburn oversaw the enhancement  
21 portion of it. And three people that must go, I think,  
22 noted today -- and thousands of others that won't be  
23 named -- but Kim Paris and Lilly Salas and Wayne Wells in  
24 your Finance Division have done a tremendous job in  
25 getting all these obligations made at the last minute with

1 a bunch of their colleagues.

2 And then our federal partners over at Federal  
3 Highway Administration, Al Alonzi, Jan Brown and all of  
4 their staff have just been tremendous.

5 So in the midst of everything that's been going  
6 on with the department and all the things that have been  
7 publicly talked about over the last 18 months, I stand  
8 before you today very proud and humble to be a part of  
9 this, and to tell you that you made some tough decisions.  
10 The decisions you made to fund projects have been of  
11 tremendous value to this state. Director Saenz led us  
12 through this in a way that I think is noted across the  
13 nation as perhaps the best use of the Recovery Act of any  
14 state. And we should all be very, very proud of the men  
15 and women that made it possible, and I would commend to  
16 you each and every one of them.

17 So with that, the minute order before you today  
18 would ratify the final obligation actions that we took  
19 last week. We were authorized to take those through  
20 previous actions by the commission and are simply asking  
21 for your ratification of those actions. It would, again,  
22 fully obligate all the Recovery Act funds for  
23 transportation projects here in Texas. And I would be  
24 more than happy to answer any questions you may have at  
25 this time, and am honored and proud and thankful to

1 recommend for your adoption this minute order.

2 MR. HOLMES: John, as we've discussed before,  
3 the pace of spending is influenced by the projects that  
4 are selected, as well as weather and economic conditions.

5 Right now we've had about, what, 38 percent or so  
6 expended. Do you have a sense of the pace of expenditure  
7 of the balance of those funds?

8 MR. BARTON: We do and some of the actions  
9 taken in this last week would actually accelerate the pace  
10 of funding, the spend-out of the funds because we moved  
11 some money from some of the larger projects to some of the  
12 faster paying out projects and replacing those funds with  
13 state funds. But I would think that of the remaining 62  
14 percent of the funds on our Highway and Bridge Program  
15 that we have left to pay out, the vast majority of that  
16 will pay out in the next twelve months, and we can get you  
17 a closer definition of that.

18 We do have a few large projects, as have been  
19 noted, that will pay out over the next two and a half to  
20 three years. The Recovery Act funding on all of those is  
21 only a portion of the funds so they'll be used first and  
22 pay out quickly. I think that our financial forecast  
23 shows the last Recovery Act funds being paid out in 2014  
24 on our largest project that pays out that way which is in  
25 the El Paso community for an interchange there. The

1 deadline is in 2015 when all funds have to be spent, so  
2 we'll certainly beat that.

3           And I would like to note that there's been a  
4 lot of public discussion about that payout pace recently,  
5 and I think that Chris Lippincott for the department has  
6 done an excellent job in explaining it. I characterized  
7 it for someone the other day as when you hire someone to  
8 build a house for you, you certainly know what you're  
9 going to pay them and you enter a contract to do that, but  
10 you don't give them all the money up front and allow them  
11 to have it in their bank as they build the project.

12           And that's the way our highway projects and  
13 bridge projects work: we contract for them, all that  
14 money is committed and obligated, and then as they perform  
15 the work and progress from the beginning to the end of the  
16 project, we make payments over time. So it is a normal  
17 process that the payments are made over time and not all  
18 at once up front.

19           MR. HOLMES: I think it's notable that the  
20 majority of it will be expended within the next twelve  
21 months. Is that what I understood you to say?

22           MR. BARTON: Yes, sir.

23           MR. HOLMES: That's fantastic.

24           MS. DELISI: I think it's also worth noting  
25 that we made a conscious decision as a commission to not

1 just spend the money quickly, we recognized there was an  
2 economic benefit to quick spending but we also recognized  
3 the long-term economic development of transportation  
4 infrastructure to the state, and that's why we made some  
5 decisions to do bigger projects. That is a commendable  
6 thing that was visionary, and should not be held against  
7 us but should be, I think, held up, as you have said, as  
8 an example of how to best use these types of dollars when  
9 they come down. So good job.

10 MR. BARTON: With that, the staff would  
11 recommend your adoption of the minute order that is before  
12 you.

13 MR. HOLMES: So moved.

14 MR. UNDERWOOD: Second.

15 MS. DELISI: All in favor?

16 (A chorus of ayes.)

17 MS. DELISI: The motion passes.

18 MR. SAENZ: Thank you, John. Congratulations  
19 to you and all the staff that worked on this thing.

20 Agenda item number 10, John will continue and  
21 present an item and a minute order dealing with the Green  
22 Ribbon Program.

23 MR. BARTON: Thank you, Director Saenz.

24 Again, this item that is before you today,  
25 commissioners, deals with the department's Green Ribbon

1 landscaping program.

2           The Texas Legislature included in our general  
3 appropriations bill a rider that instructs the department  
4 to expend money on landscaping projects around the state.

5           Specifically, the rider mandates that the department  
6 allocate not less than one-half of 1 percent and not more  
7 than 1 percent of the amount of work that we spend on  
8 construction contracts, maintenance contracts and  
9 improvements for highways, for landscaping purposes within  
10 areas that are considered non-attainment for air quality  
11 or near non-attainment for air quality.

12           Landscape improvements are defined by the rider  
13 as things that would plant trees, other types of plants,  
14 do soil preparation and install irrigation systems that  
15 would promote the growth of those plants and trees.

16           The appropriations rider that I'm specifically  
17 talking about today would affect Fiscal Years 2010 and  
18 2011. In order to allow us to ensure that we were  
19 spending the appropriate amount of funds, we previously  
20 brought to you for the Fiscal Year 2010 program a minute  
21 order in September of 2009 that allocated a specific  
22 number of dollars to each of the districts that are in  
23 non-attainment or near non-attainment areas and have  
24 counties within those areas.

25           This particular slide is just a report, I know

1 it's difficult for you to see, but I wanted to point it  
2 out to you that based on the minute order that you  
3 provided for Fiscal Year 2010, across the state we were  
4 required to spend \$8.6 million on Green Ribbon type  
5 activities for landscaping functions. In Fiscal Year  
6 2010, our contract obligations for those activities was  
7 \$9.2 million, so we over committed by about \$568,000.

8 The exhibit to your minute order today, I  
9 believe Exhibit A, is reflected on the next slide which is  
10 simply saying and showing that we again are recommending  
11 that you authorize this program with the specific dollar  
12 amount to the districts that have counties that are either  
13 non-attainment or near non-attainment in terms of air  
14 quality status. You will note that we've debited one  
15 district. The Fort Worth District overspent their Green  
16 Ribbon Program last year by about \$64,000.

17 And therefore, we would recommend your approval  
18 of this minute order that would distribute based on those  
19 counties inclusion in non-attainment or near non-  
20 attainment area and their construction volumes for Fiscal  
21 Year 2011, approximately \$8.9 million in Green Ribbon  
22 Program functions.

23 Now, you may ask before I close, if we  
24 overspent by \$568,000, why are you only showing one debit  
25 for one district and one area, and that is because some of

1 the funds that are spent on landscape activities don't  
2 come out of the Green Ribbon Program. A district may have  
3 a landscape function, planting some trees or putting in an  
4 irrigation system, that's part of their normal  
5 construction contracts. And we want to make sure that in  
6 responding to the legislature in the rider that we  
7 document and show all of the landscape expenditures to  
8 fully reflect the work that's been done by the department  
9 to respond to that rider.

10 So with that, again, I'll be happy to answer  
11 any questions you may have, Madam Chair and commissioners,  
12 and I would recommend your approval of this minute order.

13 MS. DELISI: We have one person signed up to  
14 speak. Are there any questions of John before I call him  
15 up?

16 (No response.)

17 MS. DELISI: Michael Shook.

18 MR. SHOOK: My name is Michael Shook, City of  
19 Forney. I'm the director of public works. Commission,  
20 thank you for this time.

21 I would just like to say what a wonderful  
22 program this is. As you can imagine, being a director of  
23 public works, I know how to mow. Working with your staff  
24 out of the Dallas office, Patrick Hague and Brenda  
25 Calloway out of the Kaufman office, I have learned of this

1 Green Ribbon Program and we look forward to working with  
2 them and working with your staff on this. Maybe I won't  
3 have to mow as much, but we can enhance and beautify the  
4 roadways coming on Interstate 80 through Forney.

5 If you look when you travel around the State of  
6 Texas, this has really opened my eyes when I go into a  
7 town, such as Temple, coming up through Waco, of all the  
8 programs where this money has been used. It's really  
9 beautiful and it's paying off.

10 Thank you.

11 MS. DELISI: Thank you.

12 Is there a motion?

13 MR. HOLMES: So moved.

14 MR. UNDERWOOD: Second.

15 MS. DELISI: All in favor?

16 (A chorus of ayes.)

17 MS. DELISI: The motion passes.

18 MR. BARTON: Thank you.

19 MR. SAENZ: Thank you, John.

20 Agenda item number 11, commissioners, deals  
21 with finance, and James Bass, CFO, will present a minute  
22 order where we are requesting approval to submit a request  
23 to the Governor and the LBB.

24 MR. BASS: Thank you, Mr. Saenz. Again for the  
25 record, I'm James Bass, chief financial officer at TxDOT.

1           As Mr. Saenz stated, this particular minute  
2 order would authorize the executive director to submit a  
3 request to both the Governor and the LBB to transfer  
4 capital budget appropriation to the ERP project, or the  
5 ProjectONE IT project managed by the Comptroller's Office.

6           I would be happy to answer any questions the  
7 commission might have, and if there are none, I would  
8 recommend your approval.

9           MR. HOLMES: So moved.

10          MR. MEADOWS: Second.

11          MS. DELISI: All in favor?

12          (A chorus of ayes.)

13          MS. DELISI: The motion passes.

14          MR. BASS: Thank you.

15          MR. SAENZ: Thank you, James.

16                 Agenda item number 12, Brian Ragland, Finance  
17 Division director, will present a minute order dealing  
18 with the State Infrastructure Bank that deals with  
19 approving us to go out for a program call for the new SIB.

20                 MR. RAGLAND: Thank you. For the record, I'm  
21 Brian Ragland, director of the Finance Division.

22                 This proposed minute order establishes  
23 parameters for a program call for applications for loans  
24 from the Prop 12 GO funded SIB. The minute order  
25 stipulates the applications can only be from public

1 entities, may only be for highway improvement projects,  
2 that the total amount is estimated at \$1 billion, and that  
3 there will be a 60-day deadline after the Texas Register  
4 is published with the notice of the call.

5 James adequately described the current status  
6 of the request that's pending with the LBB for the  
7 appropriations, but this action today accomplishes a  
8 necessary step within the rule that you approved earlier  
9 to move forward once we have that approval. And staff  
10 recommends your adoption.

11 MR. HOLMES: Brian, when would it be published?

12 MR. RAGLAND: It's my understanding that --  
13 well, we wouldn't publish the program call until, I don't  
14 want to speak for the administration, but in my mind,  
15 until the approval comes forward.

16 MR. SAENZ: We have two things that are  
17 pending. One is the rules do not become effective until  
18 20 days after today, so if within the 20 days we get the  
19 LBB approval, at that point we would publish, but if we  
20 have not gotten the LBB approval, we'll wait till LBB  
21 approval to approve the program call, to move out with the  
22 program call.

23 MR. RAGLAND: And then we would allow 60 days.

24 MR. SAENZ: This is just approval to authorize  
25 to be able to move forward.

1 MR. HOLMES: This simply tees it up waiting on  
2 that.

3 MR. RAGLAND: Exactly. And staff recommends  
4 your adoption.

5 MR. HOLMES: So moved.

6 MR. UNDERWOOD: Second.

7 MS. DELISI: All in favor?

8 (A chorus of ayes.)

9 MS. DELISI: The motion passes.

10 MR. SAENZ: Brian will also present agenda item  
11 12(b) dealing with a preliminary approval for a SIB loan  
12 with the North East Texas Regional Mobility Authority and  
13 Smith County.

14 MR. RAGLAND: Thank you, Amadeo.

15 This proposed minute order grants preliminary  
16 approval for a SIB loan in the amount of \$39.2 million to  
17 the North East Texas RMA for construction of Segment 3B of  
18 the Toll 49 project. This amount is part of a larger  
19 total project cost, and the department intends to continue  
20 to discuss other financing alternatives between now and  
21 any final approval that you would give.

22 Staff recommends your adoption.

23 MS. DELISI: One person is signed up. Are  
24 there any questions for Brian before I call her up? No?

25 Okay. Then at this time I'd like to call up

1 Linda Thomas.

2 MS. THOMAS: Good morning. I'm Linda Thomas,  
3 vice chair of the North East Texas Regional Mobility  
4 Authority, and we send greetings from our chair, Jeff  
5 Austin, who couldn't be with us today. He's in  
6 Washington, D.C. Also, sending greetings from North East  
7 Texas. We're so happy to be here to talk about our Loop  
8 49 project.

9 Chair Delisi and members of the commission, you  
10 all have been so supportive to help us with this project,  
11 and it's amazing to me, I think this is my third time to  
12 be here in about six or seven years, and I'm happy to  
13 report that we have 16 miles either completed or under  
14 construction. So we think that's quite an achievement in  
15 such a short period of time, and we have to thank the  
16 commission and the joint efforts of TxDOT, the city and  
17 county of Smith County, Tyler, Texas, the MPOs and  
18 countless hours of volunteer efforts.

19 This project is extremely important to East  
20 Texas and I'm pleased to announce my fellow member, Ted  
21 Bell, who is our treasurer, is with us today from Smith  
22 County, as well as members of our staff.

23 Toll 49 is very important to North East Texas.  
24 Those of you all who have traveled east on I-20 any time  
25 realize now that you have to add another 30 to 45 minutes

1 because of accidents and numerous projects along the way,  
2 so it makes a real handicap for those in East Texas who  
3 are trying to get to other parts of the state.

4 Toll 49 has been our top priority from the  
5 beginning and we have continued to work on it, and you  
6 have continued to help us try to find sources of  
7 financing, both locally, state and nationally. Toll 49  
8 will provide increased mobility, safety and economic  
9 benefit for the region.

10 Segment 3B, that we are working on now,  
11 completes the connection to I-20 and that is the most  
12 important connection of all because that does give us the  
13 opportunity to help ease the traffic on I-20, but also  
14 those in trucks and different commercial transportation  
15 coming from the coast and from the ports will be able to  
16 circumvent Tyler proper and connect with I-20 to go on  
17 their way. Of course, down the road for the rest of the  
18 project, Toll 49 will go east and open up the doors to  
19 Louisiana and Ark-La-Tex.

20 At this point and juncture we have a real  
21 opportunity, a real window of time because of different  
22 things that are in the economic picture right now. We  
23 already have selection of CH2M Hill as its design-build  
24 developer for the project. We have a best value selection  
25 with a price of \$73 million, and a 22-month schedule. The

1 developer's price is fixed until the end of the calendar  
2 year when an escalation clause could increase the  
3 developer's price and impacting the total project cost.

4 The NETRMA anticipates issuing companion senior  
5 lien financing later this year, bonding opportunities that  
6 would be advantageous for the project, but these will  
7 expire at the end of 2010. It's important that the NETRMA  
8 gets to the capital markets this calendar year to be able  
9 to present the best financial package for the project, so  
10 you see, time is of the essence.

11 I'd be happy to answer any questions or refer  
12 to our staff people who are here. Owen is you project  
13 manager. I thank you again for letting us be here and for  
14 the wonderful collaboration that we've been able to have  
15 with the commission and TxDOT.

16 MS. DELISI: Thank you. Are there any  
17 questions?

18 MR. UNDERWOOD: So moved.

19 MS. DELISI: Is there a second?

20 MR. MEADOWS: Second.

21 MS. DELISI: All in favor?

22 (A chorus of ayes.)

23 MS. DELISI: The motion passes.

24 MR. SAENZ: Agenda item number 13 deals with  
25 regional mobility authority projects. Agenda item number

1 13(a) is final adoption of a toll equity request from the  
2 Central Texas Regional Mobility Authority.

3 MR. RAGLAND: Yes. This proposed minute order  
4 gives final approval to a request for assistance from  
5 Central Texas Regional Mobility Authority in the amount of  
6 \$27 million. The request is to fund development costs on  
7 several projects: Loop 1/MoPac Managed Lanes; 290 East  
8 Segments 1A, 2 and 3 from east of 183 to State Highway  
9 130; the 183 South Toll Project; 290 West from Joe Tanner  
10 to Circle Drive and 71 West from 290 to Silvermine; and  
11 the State Highway 45 Southwest Toll Project from MoPac to  
12 FM 1626.

13 The \$27 million amount includes \$13.6 million  
14 in funding and it also includes \$13.4 million of in-kind  
15 services that will be performed by the department.

16 Also, the minute order does read "in the form  
17 of equity." If you'll recall the conversation from a  
18 couple of months ago about equity, and it's my  
19 understanding that that relays our intent that any surplus  
20 from the projects will be used in the region.

21 And staff recommends your adoption.

22 MS. DELISI: Any questions?

23 MR. HOLMES: So moved.

24 MR. UNDERWOOD: Second.

25 MS. DELISI: All in favor?

1 (A chorus of ayes.)

2 MS. DELISI: The motion passes.

3 MR. SAENZ: Brian will continue and present  
4 agenda item 13(b) which is also a final approval of a toll  
5 equity request from the Central Texas Regional Mobility  
6 Authority for the US 290 project.

7 MR. RAGLAND: Thank you.

8 This proposed minute order gives final approval  
9 of a request for financial assistance from CTRMA in the  
10 amount of \$126.7 million, the amounts to be used for  
11 construction costs on Segments 1A, 2 and 3 of the Manor  
12 Expressway which is on 290 East from 183 to State Highway  
13 130.

14 This funding comes from the Austin District's  
15 Category 2 allocation, and again, it does contain the  
16 language "in the form of equity" with the same intent that  
17 the surplus be used in the region.

18 Staff recommends your adoption.

19 MR. HOLMES: So moved.

20 MR. UNDERWOOD: Second.

21 MS. DELISI: All in favor?

22 (A chorus of ayes.)

23 MS. DELISI: The motion passes.

24 MR. SAENZ: Brian will continue to make  
25 additional presentations. He will present agenda item

1 number 14 dealing with the Unified Transportation Program.

2 MR. RAGLAND: This proposed minute order  
3 revises the 2011 Obligation Limit, otherwise known as the  
4 letting cap, that you adopted a couple of months ago. The  
5 reason for this is because of adjustments that resulted  
6 from the actuals from 2010. The new amounts are reflected  
7 in Exhibit A. It also gives the executive director the  
8 authority to manage any further needed transfers within  
9 the financial constraints we have.

10 And staff recommends your adoption.

11 MS. DELISI: Are there any questions?

12 MR. HOLMES: I think it's important to note  
13 that out of 2011 funding caps \$8 million is allocated to  
14 Category 2. We've been talking about this funding cliff,  
15 and I think this shows that we've gone over it.

16 MR. RAGLAND: Yes, sir.

17 MR. HOLMES: This is a painful motion to make.

18 MS. DELISI: Is there a second?

19 MR. UNDERWOOD: Second.

20 MS. DELISI: All in favor?

21 (A chorus of ayes.)

22 MS. DELISI: The motion passes.

23 MR. SAENZ: Moving on to agenda item 15 is our  
24 Obligation Limit report that is presented monthly, and  
25 Brian will present that report.

1 MR. RAGLAND: Thank you.

2 Finally today for me, this is the monthly  
3 Obligation Limit report. It's based on the 2011 letting  
4 caps that you just approved in the previous minute order.  
5 The September lettings totaled \$156 million, of which  
6 \$92.8- counted against that cap.

7 You'll notice on the report that we've  
8 segregated out at the bottom some anomalies that we'll pay  
9 out of future allocations on a tiered basis, and we didn't  
10 want those to show negatively against the districts for  
11 2011.

12 Also, we failed to list the CDA payout amount  
13 at the bottom, as we have done in the last couple of  
14 years, and I'll make sure that's corrected on next month's  
15 report.

16 On to the motor fuel taxes, for the month of  
17 September total motor fuel taxes were up 1.62 percent  
18 versus September of last year. You'll notice that five  
19 months in a row of increases, so that's some good news.  
20 Still cautiously optimistic in this volatile environment.

21 The next page, as you requested, is the  
22 breakdown between diesel and gasoline. The diesel amount  
23 was up 5.2 percent versus September of last year, gasoline  
24 was up .8 percent, so that weighted average is what  
25 calculates back to the 1.62 for the grand total.

1           You may ask why this sheet on the dollar side  
2 shows more money than the prior sheet, and that's because  
3 this sheet is the grand total of motor fuel taxes that  
4 comes to the state. That title is misleading, and I'm  
5 going to fix that, but this is before things get stripped  
6 off, most notably the 25 percent that goes to the school  
7 fund.

8           And that's all I have today unless you have  
9 questions. There's no action required on this item.

10           MR. SAENZ: Thank you, Brian. I guess it's  
11 good to hear that we started September at least on the  
12 positive side compared to last year, so thank you for the  
13 report.

14           Moving on to agenda item number 16, agenda item  
15 16 deals with our contracts and we have two minute orders  
16 that will be presented by Russel Lenz dealing with our  
17 construction and maintenance contracts.

18           MR. LENZ: Good morning. For the record, I'm  
19 Russel Lenz, the director of the Construction Division.

20           The first item is item 16(a)(1) and it's for  
21 the consideration of the award or rejection Highway  
22 Maintenance and Department Building Construction contracts  
23 that were let on September 8 and 9 of this year. We  
24 present a total of 15 projects today, average number of  
25 bidders per project was 5.47 bidders, and we had an

1 overall underrun of 10.22 percent, and the low bid value  
2 of these contracts was \$15.2 million.

3 And staff recommends the award of all  
4 maintenance projects.

5 MR. HOLMES: So moved.

6 MR. UNDERWOOD: Second.

7 MS. DELISI: All in favor?

8 (A chorus of ayes.)

9 MS. DELISI: The motion passes.

10 MR. LENZ: Item 16(a)(2) is for the  
11 consideration of the award or rejection of Highway and  
12 Transportation Enhancement Building Construction contracts  
13 let also on September 8 and 9 of this year, and also  
14 included in that is the LaSalle County project deferred  
15 from the August commission meeting. We present a total of  
16 45 projects with a low bid value of \$170,043,401.43, an  
17 average number of bidders per project was 5.07, and we had  
18 an overall underrun of 6.05 percent.

19 And staff recommends approval and award of all  
20 construction projects.

21 MS. DELISI: Are there any questions for  
22 Russel? I have one person signed up.

23 Brad Shearer.

24 MR. SHEARER: For the record, my name is Brad  
25 Shearer. I'm vice president with Satterfield and

1 Pantikes, and I want to thank the commission for your  
2 time.

3 I don't know if it's appropriate. Mr. Lenz and  
4 I have spoken since the August meeting and he has been  
5 extremely accessible and responsive, and I have to commend  
6 him for that, so we've had discussions about this issue.  
7 And I did submit a letter to him, and I don't know if it's  
8 appropriate for me to distribute it to you because  
9 basically I'm going to read it. Is that appropriate? Can  
10 I approach?

11 MS. DELISI: Sure.

12 (Mr. Shearer distributed letter to the  
13 commissioners.)

14 MR. SHEARER: You are all aware of the issue on  
15 this, and Satterfield and Pantikes claimed a bid error on  
16 this project and it had to do with the significant impact  
17 of the error.

18 The additional information that I talked to Mr.  
19 Lenz about, as a result of the commissioners postponing  
20 the award, S&P wanted to frame additional information for  
21 staff to consider while researching to provide another  
22 recommendation for the commission to consider.

23 Our bid error, as described in our August 13,  
24 2010 letter to Ms. Gage, only occurs on one line item on a  
25 bid form that included 88 line items. This error, as

1 compared to the average of all the bidders that turned in,  
2 is 44 percent lower. This error has a significant impact  
3 on the total cost of the bid. The total cost of the bid  
4 error equates to 9.3 percent of the total cost of the  
5 project.

6 This error can be evaluated by reviewing S&P's  
7 bid and comparing it to the field of our competitors that  
8 turned in bids for this project. By looking at these  
9 comparisons, it is obvious that there was a mathematical  
10 error in the unit price and the differential clearly  
11 stands out when it's converted to dollars.

12 We understand from our legal counsel that there  
13 is a considerable authority to allow rescission of the  
14 bid. In the case of the State Highway Commission v.  
15 Canyon, the Austin Court of Appeals allowed rescission in  
16 the case where a contractor submitted a bid for a project  
17 that inadvertently included unit prices as 63 and 40 cents  
18 opposed to 1.63 and 1.40 respectively. The Court of  
19 Appeals, which I understand was affirmed by the Supreme  
20 Court, concluded that this type of error could and did  
21 indeed occur despite the exercise of reasonable diligence.

22 The case of Canyon is exactly what occurred in  
23 LaSalle County. More importantly, you can confirm that  
24 the bid was unreasonably low, close to 10 percent, and the  
25 use of the TxDOT average was taken from the website, and

1 we have already discussed that.

2 I'm not sure if the case solely stands on that.

3 Mr. Lenz and I had discussion about if our number would  
4 have been -- the proposal that we had from our  
5 subcontractor that we did not get and put in there may  
6 have been \$50 which at a comparison to \$30, just because  
7 there was a zero present in both of those number, that  
8 maybe that would have been something would have been  
9 considered. And I'm not a lawyer and I don't know if this  
10 case solely lies on that. Our number was \$54 that we got  
11 from our sub and did not get it put into the bid. So just  
12 that part of it confuses me a little bit, if using those  
13 numbers either way is a significant impact.

14 We went through this thing and the bullet  
15 points for us to be able to withdraw out bid without  
16 penalty, we met three of them, and it just appears to me  
17 that this one line item, using ordinary care, is  
18 subjective in nature. I mean, if this is the only legal  
19 issue to it, then it just seems that this would weigh  
20 heavily toward it.

21 So you know, in closing, I would like to just  
22 reiterate that the large disparity between S&P and other  
23 bidders is on this line item only. S&P did not  
24 intentionally try to manipulate this bidding process in  
25 order to gain some type of advantage. You know, we're not

1 allowed to come in here and just lowball this bid and then  
2 go to Mr. Lenz and say, Hey, we want to add another \$2  
3 million to this deal and we're still low and we get the  
4 project. You know, that's not allowed. So I don't really  
5 understand how I can gain any advantage in this process.

6 We feel strongly that we did use ordinary care  
7 in the process and we believe the comparative analysis of  
8 the bids as publicly submitted is a valid way to approach  
9 this decision.

10 And I appreciate your time, and we do apologize  
11 for this situation, and I would just like you to consider  
12 to please allow us to withdraw our bid without penalty.

13 Thank you for your time. Do you have any questions?

14 MS. DELISI: Does anyone have any questions?

15 MR. HOLMES: Bob, can you comment on this other  
16 case and how it relates or doesn't?

17 MR. JACKSON: I think both sides agree that the  
18 law is that they exercise ordinary care. There are no  
19 legal arguments here, that's the law. The commission and  
20 staff are in a position of applying the facts of this case  
21 to the law, and staff feels that they did not exercise  
22 ordinary care. That's really what the disagreement is  
23 about.

24 MR. HOLMES: Let me make sure I understood what  
25 you said. You said that from a legal standpoint you agree

1 that it's an issue of matter of care, and the issue is  
2 whether you subjectively evaluate whether it's a matter of  
3 care.

4 MR. JACKSON: Yes, sir. Did they exercise  
5 ordinary care? Staff thinks they did not.

6 MR. HOLMES: And what is our precedent for  
7 other actions?

8 MR. JACKSON: And Russel can talk to that. And  
9 that's where we really want to be consistent. We've had  
10 some of these over the last couple of years and we've  
11 really got to be consistent.

12 MR. LENZ: Commissioner, the issue that we  
13 looked at was if it was a transposition or an omission or  
14 copying incorrectly a number, then we would say that we  
15 would recommend accepting the bid error. This was simply  
16 a we copied the number wrong because the number appears  
17 multiple times in their bidding documents, and that's what  
18 we've based in history whether we've made that decision as  
19 accepting or rejecting the bid error.

20 In the case that was cited, the price that was  
21 shown was 63 cents and 43 cents, respectively, and what  
22 they'd intended to bid, I believe was a \$1.63. It was  
23 copied wrong, as I understand the case law. And what  
24 we've applied in the past, if we'd copied and transposed  
25 the number in that process, then we would actually

1 recommend a rejection. That's not what occurred here.  
2 The documentation that we see shows a value of \$30 in the  
3 spreadsheet, \$30 is what's bid and it's handwritten in the  
4 documentation. That number is consistent throughout, and  
5 that's why, based upon our past actions as a division in  
6 the recommendations and what actions we've taken in the  
7 past have always been to reject the bid error claim under  
8 those circumstances, and we're trying to stay consistent  
9 with that recommendation.

10 MS. DELISI: Are there any other questions of  
11 Russel?

12 MR. UNDERWOOD: A question of Bob. Bob, if we  
13 were to accept this gentleman's premise or whatnot, would  
14 we be setting a precedent?

15 MR. JACKSON: Yes, we would.

16 MR. UNDERWOOD: Thank you.

17 MS. DELISI: So any other questions? So is  
18 there a motion? Staff recommends?

19 MR. LENZ: Staff recommends that we reject the  
20 bid error and that we award the contracts that we bring  
21 forth this morning.

22 MS. DELISI: So that's the request before us.  
23 Is there a motion?

24 MR. MEADOWS: So moved.

25 MS. DELISI: Is there a second?

1 MR. UNDERWOOD: Second.

2 MS. DELISI: All in favor?

3 (A chorus of ayes.)

4 MS. DELISI: The motion passes.

5 MR. SAENZ: Thank you, Russel.

6 Item 16(b), Glenn Hagler from our General  
7 Services Division will present a minute order dealing with  
8 our HUB, Historically Underutilized Business Program.

9 MR. HAGLER: Thank you, Amadeo. Good morning.

10 I'm Glenn Hagler, director of Purchasing with the General  
11 Services Division.

12 The request proposes the establishment of  
13 statewide participation goals for the Historically  
14 Underutilized Business Program under Title 43, Section  
15 9.54 of the Administrative Code. The section requires the  
16 administration to establish annual goals for HUB  
17 participation on state and locally funded contracts.  
18 These are contracts other than highway construction and  
19 highway maintenance.

20 The goals that are requesting are consistent  
21 with those goals set by the State Comptroller and the  
22 goals are based upon three criteria: a percentage of the  
23 total cost of the contracts, the current adopted state  
24 disparity study from 1994, and the availability of HUBS.

25 The current goals are as follows: 11.9 percent

1 for heavy construction, 21.6 percent for building  
2 construction, 57.2 percent for special trades, 20 percent  
3 for professional services, 33 percent for other services,  
4 and 12.6 for commodity purchases.

5 As you may be aware, the Comptroller recently  
6 completed a legislatively directed disparity study and is  
7 in the early stages of the rulemaking process. We do  
8 anticipate changes resulting from the rulemaking process  
9 and the study. Once those rules are passed and adopted,  
10 staff will review and come back later with any suggested  
11 changes for TxDOT goals.

12 The final 2010 year report will not be out  
13 until next month, however, for the midyear from April  
14 results, TxDOT expenditures are up in four of the six  
15 categories for expenditures with HUBs and exceeding the  
16 statewide goals in two of those areas.

17 Going forward, we have an internal initiative  
18 that continues to improve the data reporting structure.  
19 We have reason to believe that we may be under-reporting  
20 expenditures, particularly in the subcontracting area, so  
21 we're currently refining the reporting structure and  
22 pursuing a web-based automation project which will also  
23 ease monthly reporting for the prime contractors.

24 TxDOT has a very robust outreach program in  
25 place to reach additional small minority and underutilized

1 business contractors throughout the state. For instance,  
2 this year our staff attended 73 economic business  
3 opportunity forums, we hosted three regional small  
4 business briefings with over 883 small businesses  
5 attending those briefings. We have five permanent staff  
6 members that are hosting our outreach program and we feel  
7 like we're making some headway.

8 Staff recommends approval. I'll be glad to  
9 answer any questions you may have.

10 MS. DELISI: Any questions?

11 MR. HOLMES: So moved.

12 MR. MEADOWS: Second.

13 MS. DELISI: All in favor?

14 (A chorus of ayes.)

15 MS. DELISI: The motion passes.

16 MR. SAENZ: Thank you, Glenn.

17 Agenda item number 16(c), George Ebert, Human  
18 Resource Division director and acting Civil Rights  
19 director, will present our annual participation goals for  
20 small business enterprises.

21 MR. EBERT: Madam Chair, commissioners, Mr.  
22 Saenz. I'm George Ebert, interim director of the Office  
23 of Civil Rights. I'm joined by two colleagues that  
24 temporarily have abandoned me, Mr. R.D. Brown, the DBE and  
25 SBE Section program director, and Mr. Eli Lopez, a

1 certification specialist responsible for reporting and  
2 statistics.

3           Annually the commission establishes statewide  
4 goals for the Small Business Enterprise Program based on  
5 the availability of certified SBEs. The SBE program  
6 assists small businesses in specialized fields of state  
7 and locally funded highway construction and maintenance  
8 projects. The program is open to all small businesses  
9 that meet two requirements: first, at least 51 percent of  
10 the firm must be owned by one or more persons who are  
11 United States citizens or lawfully admitted permanent  
12 residents; secondly, the firm's gross income cannot exceed  
13 \$33.5 million averaged over the last three years.

14           The annual goal is based on the availability of  
15 SBE firms and prior contract attainment. The annual goal  
16 represents SBE participation contracts determined by a  
17 percentage of the total cost of highway construction and  
18 highway maintenance projects funded with state and local  
19 funds.

20           To determine the availability of the SBE  
21 participation and contracts, the department compared the  
22 relative availability of small businesses certified as  
23 SBEs against the availability of all contractors. This  
24 comparison indicated that 7 percent of all contractors  
25 were SBEs.

1           An assessment of prime and subcontracts for the  
2 last year we have statistics on, which is 2009, indicated  
3 that SBEs attained 3.5 percent of all contracts. Now,  
4 this was a full percentage point below what our goal was  
5 last year at 4.5 percent. We believe that a lot of the  
6 SBEs were participating in federally funded projects, and  
7 that's why they weren't participating in the state and  
8 locally funded projects.

9           We believe that going forward, with the  
10 reduction in federal funding, smaller contracts  
11 anticipated for next year and better reporting on the part  
12 of our office will enable us to achieve the goal of 4.5  
13 percent, and so we're recommending that we continue with  
14 that goal from last year of 4.5 percent.

15           Do you have any questions?

16           MR. HOLMES: Just a couple of questions. First  
17 of all, George, in my folder it has 5.5 and I'm assuming  
18 that that's just a typo because Fred's has 4.5.

19           MS. DELISI: Mine has 4.5.

20           MR. UNDERWOOD: Bill's has 4.5, so we're having  
21 a lot of fun and feel very comfortable about this book.

22           (General laughter.)

23           MR. EBERT: It is 4.5 percent.

24           MR. HOLMES: I think maybe my page just didn't  
25 get changed.

1           As we discussed previously, the success of  
2 these programs is heavily influenced by the outreach  
3 programs that we institute and monitor and nurture, and it  
4 seems to me that that's an area that we need to continue  
5 to give attention, both in the HUBs and in the SBEs, and  
6 so I would encourage you to continue those programs and  
7 enhance them as you can.

8           MR. EBERT: Yes, sir.

9           MR. HOLMES: So moved.

10          MS. DELISI: Is there a second?

11          MR. MEADOWS: Second.

12          MS. DELISI: All in favor?

13          (A chorus of ayes.)

14          MS. DELISI: The motion passes.

15          MR. SAENZ: Thank you, George.

16                 Agenda item number 17, commission is our Sunset  
17 Commission report update, and Steve Simmons, deputy  
18 executive director, will present this agenda item for us.

19                 MR. SIMMONS: Good morning, Madam Chair and  
20 commissioners. For the record, I'm Steve Simmons, deputy  
21 executive director of the Texas Department of  
22 Transportation. I'm here to offer you an update on the  
23 department's implementation of the Sunset Advisory  
24 recommendations.

25                 Department staff recently met with the Sunset

1 Advisory Commission to discuss our efforts since the last  
2 review and process moving forward, and we're very  
3 fortunate to have the majority of the folks that were here  
4 with us two years ago continuing on with our review. In  
5 fact, we have two of the members of Sunset staff with us  
6 today, Katharine Teleki and Leonard Chan, and Leonard is  
7 new, he is one of the two new ones that's helping bring  
8 our recommendations forward.

9           The Sunset staff will be conducting a limited  
10 review of the department over the next few months with an  
11 updated report to be published in November. While they  
12 are focusing on the previous recommendations of the 81st  
13 Legislature about the continuation of TxDOT, there is  
14 certainly a possibility of new and updated issues to  
15 arise. Our public hearing will be in mid December with  
16 the decision hearing on January 12.

17           Since I updated you in June, there has been  
18 quite a bit of progress made on implementing our  
19 recommendations from the 81st Session. Planning rules  
20 have been adopted, the Strategic Plan has been completed,  
21 and the department's new customer feedback system is  
22 slated to be operational department-wide next week.

23           I'll begin with the progress that's been made  
24 with the items in Issue 2. As you'll recall, Issue 2 of  
25 the Sunset Commission's report deals with the

1 transportation planning and development process. The  
2 items instrumental in completing Issue 2 include the  
3 Statewide Long-Range Transportation Plan, the Strategic  
4 Plan, and transportation planning rules that have recently  
5 been studied by the Transportation Planning and Project  
6 Development Rulemaking Advisory Committee.

7 In May and August, open houses were held to  
8 receive citizen feedback and comment on the Statewide  
9 Long-Range Transportation Plan. A draft of that plan is  
10 now available for public review and the commission heard  
11 an update on the status of the plan at your August  
12 workshop. It is anticipated that this plan will be  
13 adopted later this fall.

14 The department's 2011-2015 Strategic Plan was  
15 adopted by the commission in June and was approved by the  
16 Legislative Budget Board and the Governor's Office a month  
17 later, bringing us 100 percent complete on that item.

18 Another item in Issue 2 is the changes to the  
19 Planning and Programming rules in the Texas Administrative  
20 Code. The Rulemaking Advisory Committee developed draft  
21 rules that were adopted by the commission in August after  
22 transportation partners and citizens had an opportunity to  
23 provide feedback on two separate occasions, once before  
24 the proposal of the draft rules and once after.

25 With the adoption of the planing rules, the

1 approval of the Strategic Plan, and the Statewide Long-  
2 Range Plan moving along, we continue to make progress on  
3 the Sunset Commission's recommendation in this area. On  
4 average, I would say that we're about 96 percent complete  
5 on this item.

6 The items in Issue 3 continue to move forward  
7 as well. Issue 3 concerns the department's public  
8 involvement efforts, customer relationships and  
9 information-sharing.

10 An internal work group continues to work with  
11 Texas Southern University in developing a public  
12 involvement policy. TSU has attended many TxDOT public  
13 engagement activities to evaluate our current practices  
14 and be able to make recommendations on improvements. TSU  
15 should be completing their study and have a policy ready  
16 for review in November.

17 The new customer feedback system, CRAFT, which  
18 stands for Customer Relations and Feedback Tracking, is  
19 set to be operational department-wide next week. The  
20 districts have undergone training and have been testing  
21 this new system in preparation for launch. The CRAFT  
22 system will create a standard process for department-wide  
23 tracking feedback and complaint data.

24 In order to achieve the Sunset Commission's  
25 recommendation of centralizing marketing campaigns, the Ad

1 Council was created. This is an internal work group made  
2 up of members from various divisions that are involved  
3 with media and marketing campaigns. The Ad Council is  
4 developing a strategic communication plan before  
5 soliciting a pool of vendors to handle the department's  
6 marketing needs.

7           Since I came to you in June, a usability study  
8 of TxDOT's txdot.gov has been completed. That's our  
9 website. This study shows us what can be done to our  
10 website to make it more user-friendly, make content easier  
11 to find for our customers, and how we can better manage  
12 the content that is on the website.

13           Significant progress has been made on the items  
14 in Issue 3 and we continue to study ways to better our  
15 public involvement and improve our external communications  
16 in a variety of ways. There is still work to be done in  
17 this area as the percentage complete for Issue 3 items are  
18 around 80 percent. I look forward to getting our customer  
19 feedback system operating and continuing to improve our  
20 customer relationship.

21           When I came to you in June, many of the items  
22 in Issue 4 had been completed. These items deal with  
23 professional service contracts such as the communication  
24 policies for soliciting contracts, setting time frames,  
25 and providing an overhead rate to districts for contracts.

1 In June, communication plans had been established to  
2 define roles and responsibilities in contracts, time  
3 frames had been established for contracting processes, and  
4 accountability for contract negotiation and oversight had  
5 been established at the regional level.

6 Since June, another course has been added for  
7 professional and scientific contracts. The initial  
8 courses were for areas including engineering and  
9 architecture. The new course includes other areas such as  
10 contracts for right of way acquisition providers,  
11 landscape architects, and private consulting service.  
12 Beginning in December, this four-day course will be  
13 offered by our contract lawyers in the Contract Services  
14 Section of GSD.

15 Also since June, four additional staff have  
16 been hired in the consultant contract office as  
17 recommended by the Sunset Commission.

18 The items in Issue 4 concern training,  
19 contracts and standard operating procedures and are almost  
20 all complete. In fact, being the engineer, they're 98.6  
21 percent complete.

22 As we move closer to the legislative session,  
23 these recommendations will be under consideration again as  
24 part of our limited Sunset Commission review. I am  
25 pleased to be able to report back to the Sunset Commission

1 and the legislature on the work the department has done in  
2 implementing these recommendations, even though our Sunset  
3 legislation was not passed. We have taken the initiative  
4 to complete as many Sunset Commission recommendations as  
5 possible as long as they did not require legislation. We  
6 believe we're complete with these items and with most of  
7 the scheduled for completion before the legislature  
8 convenes in January.

9 At this time I'd be happy to answer any  
10 questions.

11 MS. DELISI: Thanks, Steve.

12 MR. SIMMONS: Thank you.

13 MR. SAENZ: Thank you, Steve.

14 Agenda item number 18, commission is our  
15 routine minute orders dealing with donations to the  
16 department, eminent domain proceedings, highway  
17 designations, load zones and postings, right of way  
18 dispositions and donations, release of access rights, and  
19 speed zones.

20 Each of these minute orders, we'll be happy to  
21 answer any questions, but staff would request approval of  
22 the entire package, and would be happy to answer any  
23 questions individually if you would like.

24 MS. DELISI: Is there a motion?

25 MR. HOLMES: So moved.

1 MS. DELISI: How about a second?

2 MR. UNDERWOOD: Second.

3 MS. DELISI: All in favor?

4 (A chorus of ayes.)

5 MS. DELISI: The motion passes.

6 MR. SAENZ: Madam Chair, we do not have an  
7 executive session, so those are all of the agenda items.

8 This completes all the action items on the  
9 agenda. Is there anyone signed up for open comment?

10 MR. SAENZ: Yes, ma'am.

11 MS. DELISI: We have two people signed up for  
12 open comment. The first person I'll call up is Mr. H.F.  
13 Van Der Grinten.

14 MR. VAN DER GRINTEN: Good morning.

15 MS. DELISI: Good morning.

16 MR. VAN DER GRINTEN: I am the founder of the  
17 Houston Coalition Against Red Light Cameras, and I am  
18 concerned that TxDOT is not taking a leadership role in  
19 preventing the use of short yellow change intervals on  
20 traffic lights that are photo enforced. This unscrupulous  
21 practice unfairly punishes the driving public.

22 It has been documented that the City of Houston  
23 and five outlying communities have engaged in this  
24 practice. I am sure that many communities throughout the  
25 state are also guilty of this practice. The localities

1 that I know about are Houston, Baytown, Humble, Jersey  
2 City, League City, and Sugar Land. Of these six, only one  
3 community, League City, has fessed up and refunded the  
4 funds that were paid on a traffic light with a short  
5 yellow.

6 The others claim that their short yellows were  
7 actually permitted by TxDOT, and therefore, the fines were  
8 properly issued and collected. They take cover by  
9 claiming that the requirements, as stated in the Texas  
10 Manual on Uniform Traffic Control Devices, commonly  
11 referred to as MUTCD, is a yellow interval of only three  
12 to six seconds. That defense, at best, is only partially  
13 correct and is the result of confusing language in the  
14 MUTCD.

15 TxDOT recognizes that a minimum yellow change  
16 interval must be based on the approach speed and there is  
17 a formula for calculating this minimum. TxDOT uses this  
18 formula for traffic lights which it controls but declines  
19 to enforce this practice or even specify that what's  
20 standard is acceptable for local jurisdictions which  
21 control their own traffic lights.

22 I have met with TxDOT's director of the Traffic  
23 Control Division and have been unable to convince her that  
24 a lack of leadership by TxDOT is fundamentally detrimental  
25 to the interests of the driving public. No state agency

1 is willing to address this issue which is nothing less  
2 than either entrapment or taxation through a method of  
3 random selection.

4 My correspondence with TxDOT on this issue are  
5 available on the internet at HoustonCoaliation.net/corr.  
6 I will happily provide this link to anyone who emails me.  
7 My address is CaptainVan@aol.com. Thank you.

8 Any questions?

9 MS. DELISI: Any questions? Go ahead.

10 MR. HOLMES: I think I'm really directing this  
11 maybe to Amadeo and Bob. Is there documented evidence  
12 that when red light cameras are installed that the yellow  
13 interval is reduced in time? I mean, is that going on?

14 MR. VAN DER GRINTEN: Yes, sir, it is. In  
15 Baytown it's definitely going on. Other jurisdictions, it  
16 may be just an honest mistake, but when the mistake is  
17 pointed out to them, they don't give back the fines that  
18 were collected on those.

19 MR. SAENZ: I know that there was legislation  
20 last session about extending or making a minimum yellow  
21 time. That bill did not pass. I had not heard of this  
22 particular issue, but I would have to look at it. I'll  
23 check with our traffic people.

24 MR. HOLMES: It seems to me that if you reduce  
25 the yellow in order to enhance the fine, that doesn't sit

1 very well, but also, if you don't increase the all red  
2 interval, it becomes really dangerous. And I'm hopeful  
3 that TxDOT is not part and parcel to that program.

4 MS. DELISI: Well, what's our current authority  
5 when it comes to these traffic signals?

6 MR. SAENZ: Let me ask Steve or Carlos, since  
7 you were Traffic Division director, if you can give us a  
8 hand, please.

9 MR. SIMMONS: For the record, Steve Simmons,  
10 deputy executive director.

11 I believe most of the cities that this  
12 gentleman is referring to are those cities that are now  
13 responsible for the traffic signals. Now, some of the  
14 signals he's talking about could be off-system signals.  
15 We would be monitoring those that are on-system, and I  
16 believe they have to submit to us a plan when they put a  
17 red light camera on a signal that's on our system. Is  
18 that right?

19 MR. HOLMES: There's a follow-on to that. Are  
20 we approving a shortened yellow interval?

21 MR. LOPEZ: Carlos Lopez, Austin District  
22 engineer.

23 What an entity should do, and we publish this  
24 on our website, is do a traffic engineering study before  
25 placing the camera, and that's where they need to ensure

1 that they've done all the right things that they need to  
2 do at a signal before defaulting to a camera. Proper  
3 yellow interval, are the signal faces visible, are the  
4 cycle lengths correct. They should do all that first  
5 before resorting to a camera. Now, once that camera is  
6 installed, it should have nothing to do with the length of  
7 the yellow interval. That means that they've done all  
8 they can; the camera now is the enforcement device.

9 And in answer to the gentleman's question,  
10 TxDOT is not an enforcement agency, we don't go out and  
11 engineer traffic signals for folks that are off our  
12 system, but we do provide guidance and the manual does  
13 apply to a signal on any public roadway.

14 MR. UNDERWOOD: So what you're saying, Carlos,  
15 is we can't control what the cities do, we can only  
16 control what's on our system.

17 MR. LOPEZ: That is correct. But it would be  
18 an affirmative defense for anybody that got stopped if  
19 there was a yellow interval that was less than what's  
20 required in the manual.

21 MR. UNDERWOOD: Say that one more time, Carlos.

22 MR. LOPEZ: The manual specifies, as the  
23 gentleman said, yellow intervals between three and six  
24 seconds, depending on the speed and the road width they're  
25 crossing, but if somebody had a 2.5-second amber, then

1 that would be a problem. But I seriously doubt there's  
2 anybody out there that would put their engineering seal on  
3 timing plans that would do that because it's so plainly  
4 laid out in the manual.

5 MR. UNDERWOOD: But you're saying that that  
6 would be a defense for somebody that did get a ticket is  
7 what you were implying.

8 MR. LOPEZ: Obviously, yes.

9 MR. SIMMONS: I might add one other thing to  
10 clarify what Carlos said. Like for the City of Houston,  
11 they're responsible for all the signals within their city  
12 limits, but some of those signals are on our system. So  
13 while they're responsible for the timing and maintenance  
14 and things of that on the signals, we still have an  
15 oversight of that. In other words, we just kind of work  
16 with them and coordinate with them. But I believe what  
17 Carlos was talking about is those signals that are on  
18 Hillcroft and things like that that are completely off our  
19 system.

20 MR. HOLMES: Of course, you've got Westheimer  
21 which has a lot of signals that is on our system.

22 MR. SIMMONS: I call that FM 1093.

23 MS. DELISI: I want to be clear. So if it's on  
24 our system, we have oversight, obviously. If it's off our  
25 system, we don't; we provide guidance.

1 MR. LOPEZ: Right.

2 MS. DELISI: So at a minimum, what we could do  
3 is make sure that there is proper oversight being  
4 exercised on the signals. I don't know how many of those  
5 signals have cameras in these communities. That is what  
6 we know we can do, and absent any legislative change, if  
7 it's not on our system, there's not much we can do.

8 MR. LOPEZ: That's correct.

9 MR. SAENZ: Carlos, the question that I would  
10 ask is even though, say, the City of Houston has the  
11 responsibility of maintaining and operating the signals  
12 even on the state highway system, is the traffic study  
13 that determines the signal timing submitted to us for us  
14 to review and approve?

15 MR. LOPEZ: Yes. If it's on our system, we  
16 would look that over and make sure they've run all their  
17 traps before allowing that, even though we don't maintain  
18 and operate it.

19 MR. SAENZ: In other words, so we do get the  
20 signal timing study that determines red, yellow, green and  
21 the intervals for that signal.

22 MR. LOPEZ: Right. We would look at it, our  
23 local district would look at it and see if everything  
24 seems to be right on that signal, even though we don't  
25 maintain and operate it. Then TxDOT says yes, it's okay

1 to put a camera.

2 MR. SAENZ: Well, forget the camera. I'm just  
3 talking about a signal without a camera. In other words,  
4 just the process for the approval of signal timing for  
5 signals that are on the state highway system but  
6 maintained by the entity.

7 MR. LOPEZ: Typically, no. At that point the  
8 city handles all the cycle lengths, all the timing on the  
9 state highway system. Where we would get involved would  
10 be for a camera type installation, we would do those  
11 checks. But once it's a regular signal on our system in a  
12 city over 50,000, they're responsible for the signal  
13 timing.

14 MR. SAENZ: We do not have any approval  
15 authority of the signal timing.

16 MR. LOPEZ: No, we do not. They maintain and  
17 operate it.

18 MR. UNDERWOOD: We don't even have control  
19 whether or not they put a camera there anyway, even if  
20 it's on our system. Is that correct?

21 MR. LOPEZ: If it's on our system, we would  
22 have to approve the installation of that camera.

23 MR. SIMMONS: Just a little bit of the process,  
24 they can't just put it up there without there being a  
25 justification, so there has to be justification for why

1 they want to install a camera there and then everything  
2 that goes through, setting the timing and things like  
3 that, would also have to be approved.

4 MR. HOLMES: There are couple of features to  
5 that yellow interval. One of them is, as you pointed out,  
6 Carlos, if it's below three seconds, then it may be a  
7 legitimate safety issue, and so there might be some type  
8 of affirmative defense, or actually there might be a real  
9 safety issue.

10 But the other one is if it had been five  
11 seconds and that's what the motoring public in that area  
12 had been used to and it was then reduced to three simply  
13 to catch a number of people on the camera, do we have that  
14 going on, do we think that's happening too? They're not  
15 going below the safe limit but it's manipulating the  
16 system.

17 MR. LOPEZ: Without knowing what all the cities  
18 do on their timing, I would certainly hope nothing like  
19 that would be going on.

20 MR. HOLMES: Captain Van seems to think  
21 otherwise. Right?

22 MR. LOPEZ: And I think he ought to definitely  
23 take that up with the local jurisdiction that he believes  
24 may be doing that.

25 MR. VAN DER GRINTEN: I have, sir, and I've

1 gotten nowhere.

2 MS. DELISI: I think what might be helpful for  
3 me if we can get maybe a one-pager on what the current law  
4 is and what it allows and what we can do right now for  
5 lights that have cameras on the state system, and perhaps  
6 there may be some legislative changes that need to be  
7 presented to the legislature, if they so choose to  
8 continue the red light cameras. I don't know if they will  
9 or not; every two years it's a debate. But if they do, if  
10 we need additional authority to make sure these kind of  
11 games aren't being played, then we need to make sure we're  
12 prepared.

13 MR. SIMMONS: We'll get our Traffic Division to  
14 put a document together and also do some spot-checking.

15 MR. LOPEZ: Thank you, commissioners.

16 MS. DELISI: Thank you, sir.

17 And then the last person is Steven Highlander.

18 MR. HIGHLANDER: Good morning, commissioners.  
19 My name is Steven Highlander. I'm from Austin and I'm  
20 here representing the Texas Historical Commission of which  
21 I'm one of the commissioners.

22 As I'm sure you're aware, our two agencies,  
23 along with the Parks and Wildlife Department and the Texas  
24 Commission on the Arts, are directed by Government Code  
25 481.172 to join in a memorandum of understanding to

1 further the state's tourism efforts. These agencies meet  
2 annually with the Governor's Economic Development and  
3 Tourism Office to lay you their plans for the coming year,  
4 and Section 481.172 expresses the legislature's intent  
5 that the agencies share costs related to administrative  
6 support for the state's tourism activities.

7           You've been most generous in doing that exactly  
8 for a number of years now. Each year TxDOT provides half  
9 a million dollars to the THC to support the nationally  
10 award-winning Heritage Trails Program, and I realize this  
11 year brings additional pressures to cut costs but these  
12 funds are critical to our agency's budget and we have come  
13 to count heavily on TxDOT's support.

14           I'm here today because your Legislative  
15 Appropriation Request for 2012-2013 proposes elimination  
16 of the rider, Rider 12, that calls for the interagency  
17 transfer of these funds, \$1 million over the biennium.  
18 I'd like to take a few moments to stress the importance of  
19 investing in Texas heritage tourism and ask for your  
20 continued support.

21           The nearly \$6 billion heritage tourism industry  
22 in Texas is the fastest growing segment of the Texas  
23 travel market. The industry depends heavily on the  
24 successes of our Texas Historical Commission's Trails  
25 Program which was specifically designed to promote the

1 wealth of history distributed across a considerable  
2 expanse of our great state. The Texas Heritage Trails  
3 Program covers all 254 counties in Texas and constitutes  
4 an integrated effort to promote Texas history.

5           When the legislature invests in promoting  
6 heritage tourism in Texas, it does so for good reason  
7 because the investment generates taxes on travel dollars  
8 by visitors to the tune of \$7.35 for every dollar  
9 invested. The money provided by TxDOT goes directly to  
10 support the operation of the Trails Program statewide.

11           For example, some of the money goes back to  
12 rural Texas in the form of partnership grants. In our  
13 most recent grant round, the THC awarded funds to the City  
14 of Frisco for development of an educational brochure on  
15 the Shawnee Trail, to the Cochran County Historical  
16 Commission for the development of a virtual tour of the  
17 Buffalo Soldier expedition in 1887, and to the El Paso  
18 Historical Commission for a newspaper style publication  
19 highlighting area history for children in El Paso and  
20 surrounding counties.

21           The money is also used for the state's required  
22 20 percent match to the SAFETEA-LU federal funds awarded  
23 to THC to support operations in the ten Texas Trails  
24 offices around the state, including development of a new  
25 program to be launched this coming spring that will

1 promote our trails to visitors both inside and outside the  
2 state.

3 Failure to provide 20 percent match to more  
4 than \$3.5 million in federal funds that we budgeted to  
5 spend during the coming biennium would severely jeopardize  
6 these efforts.

7 Travel expert Arthur Farmer states that people  
8 travel in large part to visit the past or experience a  
9 form of rural small town life unavailable in their home  
10 cities, and this is one of the reasons why movements for  
11 the historic preservation is so avidly supported by  
12 tourist bureaus and travel companies all over the country.

13 And that's exactly why THC supports and actively promotes  
14 the heritage tourism industry through its Texas Trails  
15 Program.

16 We appreciate and ask for your continued  
17 support and hope the opportunity will present itself in  
18 the future to discuss the option for a designated funding  
19 source to resolve this issue once and for all. But in the  
20 meantime, I'd like to express our gratitude for the  
21 funding received in past years, and we understand the  
22 technicality why this rider is slated for elimination each  
23 LAR. We also understand your focus on highway  
24 construction and share your interest in seeing that  
25 necessary repairs are made to that enormous

1 infrastructure. Without highways, we cannot transport  
2 tourists across our vast state.

3 And we too would prefer that the Heritage Trails  
4 Program be supported by an appropriation from the state's  
5 general revenue, but that seems unlikely in the upcoming  
6 legislative session, and until it is, we can only ask for  
7 your continued support for this program through whatever  
8 sources you might have at your disposal.

9 Thank you for your time, and I appreciate you  
10 hearing from us. Any questions?

11 MS. DELISI: Any questions? I don't think so.  
12 Thank you very much.

13 Is there any other business to come before the  
14 commission? There being none, I will entertain a motion  
15 to adjourn.

16 MR. UNDERWOOD: So moved.

17 MS. DELISI: Second?

18 MR. HOLMES: Second.

19 MS. DELISI: All in favor?

20 (A chorus of ayes.)

21 MS. DELISI: The motion passes.

22 Please note for the record that it is 11:01  
23 a.m. and this meeting stands adjourned.

24 (Whereupon, at 11:01 a.m., the meeting was  
25 concluded.)

C E R T I F I C A T E

MEETING OF: Texas Transportation Commission Meeting

LOCATION: Austin, Texas

DATE: September 30, 2010

I do hereby certify that the foregoing pages,  
numbers 1 through 102 inclusive, are the true, accurate,  
and complete transcript prepared from the verbal recording  
made by electronic recording by Nancy King before the  
Texas Transportation Commission.

10/04/2010  
\_\_\_\_\_  
(Transcriber) Date)

On the Record Reporting  
3307 Northland, Suite 315  
Austin, Texas 78731