# TEXAS DEPARTMENT OF MOTOR VEHICLES

## BOARD MEETING

10:05 a.m. Thursday, April 14, 2011

200 East Riverside
Building 150
Room 1.B1
Austin, Texas 78704

## BOARD MEMBERS:

Victor Vandergriff, Chair Cheryl E. Johnson, Vice Chair Cliff Butler Jim Campbell Ramsay Gillman Victor Rodriguez Marvin Rush Laura Ryan Johnny Walker

# STAFF MEMBERS:

Ed Serna, Executive Director Brett Bray, General Counsel

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## PROCEEDINGS

MR. VANDERGRIFF: Good morning. My name is

Victor Vandergriff, and I'm pleased to welcome you to 3 4 5 6

today's meeting of the Board of the Texas Department of Motor Vehicles. I'm now calling the meeting for April 14,

2011, of the Board of the Texas Department of Motor Vehicles

to order, and I want to note for the record that public

notice of this meeting, containing all items on the agenda,

was filed with the Office of the Secretary of State on April

5, 2011.

meeting.

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Before we begin today's meeting, please place all cell phones and other communication devices in the silent mode. And if you wish to address the board during today's meeting, please complete a speaker's card at the registration table at the back of the room. To comment on an agenda item, please complete a yellow card and identify the agenda item. If it is not an agenda item, we'll take your comments up during the public comment portion of the

And now I'd like to have a roll call, please, of the board members.

Board Member Butler?

MR. BUTLER: Here.

MR. VANDERGRIFF: Board Member Gillman?

MR. GILLMAN: Here.

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1	MR. VANDERGRIFF: Board Member Ingram?
2	MR. INGRAM: Here.
3	MR. VANDERGRIFF: Vice Chair Johnson?
4	MS. JOHNSON: Here.
5	MR. VANDERGRIFF: Board Member Rodriguez?
6	MR. RODRIGUEZ: Present.
7	MR. VANDERGRIFF: Board Member Ryan?
8	MS. RYAN: Here.
9	MR. VANDERGRIFF: Board Member Walker?
10	MR. WALKER: Present.
11	MR. VANDERGRIFF: And let the record reflect that
12	I, Victor Vandergriff, am here too. We do have a quorum. I
13	do want to note, the first is to welcome Blake Ingram to our
14	board. We're delighted to have him onboard with us. He's
15	been active for many years in the Independent Auto Dealers
16	Association as well as in the industry. He's very familiar
17	with Austin and the Capitol and the process that we go
18	through.
19	And we, as you know, recognize and appreciate the
20	service that Jim Campbell gave to this board during his time
21	from inception to last month. In fact, we had some agenda
22	items we made sure he covered before we let him off the
23	board. But I don't think we'll miss a beat in having Blake
24	onboard with us, and again, we're delighted.

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I'm don't know if I'm putting you on the spot,

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but if there's anything you wanted to say at this point in 1 time? MR. INGRAM: I really appreciate the comments. I 3 think Jim's shoes will be very big to fill, so I appreciate 4 the confidence and I look forward to it. 5 6 MR. VANDERGRIFF: Great. 7 MR. VANDERGRIFF: The next item is we do have some cards here but I believe they're on specific items. 8 9 They, yes, appear to be. Do we have anybody from the public 10 that just wishes to comment on an item. Don't see anybody. 11 With that, we'll move into the consent agenda portion of our agenda, item number 2, which Mr. Harbeson is 12 already at the table. 13 MR. HARBESON: Good morning. My name is Bill 14 Harbeson. I'm the director of the Enforcement Division of 15 16 the Texas Department of Motor Vehicles. 17 Today's consent agenda there's 37 agreed orders which were entered into between the staff and licensees, 18 eleven notice of violations, six motions for dismissal cases 19 20 by staff, ten Lemon Law settlement and dismissal orders, and 21 two franchise dismissal orders. Staff is requesting that the board approve these 22 23 orders. MR. RODRIGUEZ: So moved, Mr. Chairman. 24 25 MR. WALKER: I second.

MR. VANDERGRIFF: We have a motion and a second 1 2 to approve all of the orders on the consent agenda. anybody wish to take anything out on individual 3 consideration? 4 5 (No response.) 6 MR. VANDERGRIFF: Seeing none, I'll call for your 7 vote, please. Please raise your right hand in support of the motion. 8 (A show of hands.) 9 10 MR. VANDERGRIFF: It's passed unanimously. 11 you. Thank you, sir. 12 MR. HARBESON: MR. VANDERGRIFF: The next item of business is 13 resolutions for individual consideration. We have first up 14 a proposed rule item, number 3.A, and Randy Elliston will 15 16 present that from the Vehicle Titles and Registration 17 Division. 18 MR. ELLISTON: Good morning, Mr. Chairman, board 19 members. For the record, my name is Randy Elliston. the director of Vehicle Titles and Registration Division for 20 21 the agency. Before you today you have for consideration two 22 administrative rule changes, one in Section 217.28 under 23 24 Speciality License Plates, Symbols, Tabs and Other Devices,

and the other in 217.40 having to do with marketing of our

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special license plates through private vendors. Both of these are very similar and it's just a cleanup of language.

The first change in 217.28 is we currently have a requirement for nonprofit organizations to provide us a current letter from the IRS stating that they are nonprofit. The IRS only provides that information to nonprofits now when they originally apply of their nonprofit, so we're striking the current language and that they provide so what they get when they originally apply will be sufficient for their nonprofit.

The second change is making a change to the time period for posting for our license plates, our specialty license plates. Currently we have in rule a 20 day before the board limitation, we're asking to extend that to 25, and also to change our time for public comment to ten days instead of seven days. The purpose of the 25 days is to give us a little more time to make sure we get the public comment in, give us time to get it processed and in the board book and all so we can get it to you beforehand. So that's just a minor change in that.

And then in the next section which is 217.40, the only thing we're doing there, and that's in our private vendor speciality license plate program, we're doing the same thing with the 25 days instead of 20 and making the ten days instead of seven, so it's just a straight cleanup on

1	that also.
2	So we ask your concurrence on that.
3	MR. RODRIGUEZ: We're asking to propose only at
4	this time those proposals. Right?
5	MR. ELLISTON: That's correct.
6	MR. RODRIGUEZ: So moved, Chairman.
7	MR. BUTLER: Second.
8	MR. VANDERGRIFF: Motion from Board Member
9	Rodriguez and a second from Board Member Butler. Any
10	discussion on it?
11	MR. WALKER: Yes. I have a question.
12	Randy, this is a rule change but it's a rule
13	change that's required by statute. Is that correct?
14	MR. ELLISTON: It's currently in our rules, so
15	we're operating under that under the Administrative Code, so
16	if we're going to change how we proceed, we need to make
17	that change, so it will be in our Administrative Code.
18	MR. WALKER: Are we required by law to go out
19	here and get public comments on new license plates, or not?
20	MR. ELLISTON: If I remember the statute
21	correctly, it says that we may seek public comment, on the
22	private vendor side that we may get public comment and that
23	it can be posted for no more than ten days.
24	MR. WALKER: The statute says no more than ten,
25	but we want to change that?

1	MR. ELLISTON: No, sir. We're changing it to ten
2	instead of seven, so it gives us the leeway to do that.
3	MR. RODRIGUEZ: Are you asking the time frame
4	required for comment, or are you asking the actual?
5	MR. WALKER: Actually, my question was are we
6	required by law to post those plates for public comments.
7	And the reason I ask that is because we get public comments
8	and I'm not real sure what we really do with those other
9	than to just look at them.
10	MR. RODRIGUEZ: Well, theoretically we get the
11	comments and then we ultimately decide whether or not to
12	adopt a change. That's the idea.
13	MR. WALKER: Okay. Thanks.
14	MR. VANDERGRIFF: Randy, just stay there for just
15	a second, if you would, please, and take care of the motion.
16	We do have a motion and a second. Any further discussion?
17	(No response.)
18	MR. VANDERGRIFF: Please raise your right hand in
19	support of the motion.
20	(A show of hands.)
21	MR. VANDERGRIFF: The motion carries unanimously.
22	Thank you very much.
23	By the way, I failed to note that Board Member
24	Rush is not here today, so he will be absent today.
25	Randy, since you're already here, if we could I'm

going to skip on the agenda to item number 4.C, which is the approval on the speciality license plate designs, and I think our first one is Lake Dallas ISD, University of Mississippi, and the Sons of Confederate Veterans. MR. RODRIGUEZ: We're going to 4.C, Mr. Chairman? MR. VANDERGRIFF: Yes, 4.C. MR. ELLISTON: Mr. Chairman and members, the state's specialty vendor is requesting approval of two

state's specialty vendor is requesting approval of two specialty plate designs that are included in your briefing book, one for Lake Dallas ISD and the other for University of Mississippi which you'll see are the top two plates that are displayed here on the easel to my right. The other specialty plate design is proposed by the Sons of Confederate Veterans Organization, which is the bottom license plate there.

These plate designs have been published on the department's website for public comment. Those comments are also included in your book. In addition, the plates have passed legibility and reflectivity testing, and we present these to you for your consideration today.

MR. VANDERGRIFF: Do we have any discussion?

MS. JOHNSON: I move to approve.

MR. WALKER: I'll second the motion.

MR. VANDERGRIFF: We have a motion to approve and a second. Do we have any discussion?

1	MS. RYAN: I have a question. Will we be voting
2	individually or as a group?
3	MR. VANDERGRIFF: The way I've gotten the motion
4	is to take them up as the three plates together.
5	MS. JOHNSON: Would you prefer that to be
6	separated?
7	MS. RYAN: I would prefer them to be separated.
8	MS. JOHNSON: I'll revise my motion. I will move
9	that we approve the vendor plates, Lake Dallas ISD and
10	University of Mississippi, as presented.
11	MR. VANDERGRIFF: Board Member Ryan, do you have
12	an issue with that? Do you want to approve those
13	individually?
14	MS. RYAN: I don't have a problem with that,
15	that's vendor/non-vendor.
16	MR. VANDERGRIFF: Okay. So we have a motion to
17	approve the vendor plates. Do we have a second?
18	MS. RYAN: I'm sorry. Say that again.
19	MR. VANDERGRIFF: Do we have a second on the
20	motion to approve the vendor plates?
21	MS. RYAN: I'll second the motion.
22	MR. VANDERGRIFF: We have a motion and a second
23	on the vendor plates. Do we have any discussion on those
24	two plates?
25	MR. RODRIGUEZ: Mr. Chairman, I want to make the

following observations, and I think these are points that I've previously mentioned.

One, we have certain responsibilities that come with our administration of the contract with My Plates. I think that we ought to design policy that would address two concerns, in my opinion. One is we have a public safety concern. In this day and time of post 9/11, certainly license plates are an item of consideration, and I believe that the number of varying license plates in Texas that we allow is becoming proliferated every time we meet with the number of tags we release out there. There isn't at this point in time a reliable basis that someone can say that's a Texas tag because we're putting out tags like crazy.

Number two, there is a propensity for crime in some of the design of some of these license plates, and the content of the license plates ought to be evaluated for the propensity of crime. None of this can happen without board policy.

So in the discussion of this particular item, I make those observations and recommendations as well.

MR. WALKER: What is your recommendation?

MR. RODRIGUEZ: That we create more policy about how we get to clearing license plates for approval for board consideration.

MS. RYAN: Right now we have these for safety,

maybe add to that, maybe expand the criteria. 1 MR. WALKER: You want to change the criteria on 2 our policy. 3 MR. RODRIGUEZ: That we add more policy that 4 factors, those articles that I've mentioned to you: 5 6 public safety and two is the propensity for crime. 7 MR. WALKER: But your comments have nothing to do with the motion that's on the floor. Is that correct? 8 MR. RODRIGUEZ: It's discussion and that's why I 9 10 made it as such. 11 MR. WALKER: Okay. MR. GILLMAN: Could I ask a question? 12 MR. VANDERGRIFF: Please, Mr. Gillman. 13 MR. GILLMAN: Victor, tell me about the 14 propensity for crime. 15 16 MR. RODRIGUEZ: I am suggesting to you that some 17 of these will have content that can either make the person that owns the license plate a victim or can create a crime 18 stat for us in Texas to deal with. So the content of the 19 20 tag itself needs to be evaluated so that if we determine 21 that there is a propensity for crime either which way that we ought to be considering that variable as we approve the 22 23 license plate process. MR. INGRAM: Mr. Chairman? 24 25 MR. VANDERGRIFF: Please, Mr. Ingram.

MR. INGRAM: Is it fair to say that in this process that we're in now currently in voting for a particular design that that is part of the design currently that we look at that issue? Are you saying that you would like to add on to that in terms of having something?

MR. RODRIGUEZ: These are not variables that we are currently using to evaluate, and I am suggesting that we ought to have a little bit more direction from the board that includes these particular points of consideration in the process of getting certain recommendations to us. We ought not to not be able to see this if certainly these things are factored in or out.

MR. INGRAM: And I have a followup question, a general question. Having not seen very many specialty plates, is it very common for the board to approve plates that support outside schools outside of the State of Texas?

MR. WALKER: Every month.

MR. VANDERGRIFF: Yes.

MR. RODRIGUEZ: What's our number, Mr. Chairman?

How many of these are we going to have out there and when
is enough to mitigate public safety? And that's the
question. I'm not trying to put you on the spot, I'm not
asking to answer, but that's the question.

MR. VANDERGRIFF: No. I understand it's a more rhetorical question.

MR. WALKER: We have Steve Farrar here that could maybe help you out, address that question.

MR. RODRIGUEZ: No. I'm not looking for a response from them. What I'm suggesting, though, is that this is a point of consideration, a point of policy that the board needs to consider either now or beginning now or from this point forward, whatever the board chooses.

MR. BUTLER: But isn't it true that these plates have been cleared through Department of Public Safety for visibility and so forth?

MR. ELLISTON: Yes. They go through our process for visibility and legibility, and that just means can you read it, can you see it, does it reflect light off of the headlights or whatever light transmission would hit the license plate. We screen the content as far as the words that go on it, as far as is it something that would be inappropriate to be put on a highway. What you see here are just examples of a plate mainly to see what the design is, what it would look like is what you have before you today. You don't actually see a plate that's going on the highway, but we do that in-house before they're allowed to go out.

MR. VANDERGRIFF: Mr. Bray, do you have any comment on this at all on board policy or current policy available to us?

MR. BRAY: I'm sorry. Mr. Gillman and I were

having a side conversation.

MR. VANDERGRIFF: I thought I covered that separating Ramsay and Mr. Walker down here. I was going to say Johnny.

MR. BRAY: It's becoming evident that I'm the actual problem.

MR. VANDERGRIFF: That's right.

MR. WALKER: Can I move back next month?

MR. VANDERGRIFF: Mr. Walker, I sincerely apologize for accusing you of ever being a problem.

(General laughter.)

MR. BRAY: Given that he wants to move back, I quess I'm a popular problem anyway.

And I was having another conversation because I do have some slide material prepared for you all that apparently is being preempted by something else that's on the computer so I can't get it to you.

There are a considerable number of variables that go into considering plates now in the process, both in statute and in board rule. I made a note so that we can begin working on focusing on and adding to that list propensity for criminal activity or criminal mischief. But as it stands now, I can go down a long list of criteria that you have now to look at plates.

My only comment, and it's clearly just a board

discussion and board decision, and that is as to the proliferation of plates, that's a state policy that isn't really a legal concern as much as it is a common sense practical concern as to whether or not you think that as you get more and more plates it becomes more difficult for law enforcement or anyone to distinguish someone actually driving with a valid Texas plate versus something that's made up, and I guess that's the issue on proliferation. But it seems to me that leadership has thus far dictated, and I mean even leadership above the board level, that the state expand plates to as far as the minds of man can consider and the coffers will allow.

So I don't have an answer for you there other than to say that you have criteria that you could examine any particular plate and if you have issues with it there's probably reasons to discuss those issues in the given statute. I think we can add to it to accommodate Chief Rodriguez's concerns as well over time in rulemaking.

MR. VANDERGRIFF: I do note, obviously, Chief Rodriguez has raised these points in the past and I acknowledge and appreciate that he's done that and done so again here today.

Proliferation of plates question, you put it very artfully that people above us have made that point. I do think it's worth noting that the legislature has been very

expressive int his regard of wanting to maximize revenue off of plates. We have a private vendor who has a contract that runs 3-1/2 years and so there's definitely an interest in supporting the plates.

But the public safety concerns and the content causing propensity for crime are certainly duly noted.

MR. RODRIGUEZ: I just wanted to make a couple of rebuttal remarks on that, Mr. Chairman.

MR. VANDERGRIFF: Sure, please.

MR. RODRIGUEZ: And I understand the leadership direction, but at the very minimum we ought to have some sort of standardization of how we have these plates demonstrated in Texas. There is no consistent pattern about these license plates in Texas, and the concern that I have is that pretty soon we won't know whether somebody just made it up in their garage or they're actually legitimate license plates. So we ought to have a standardization, and that's more to where I am pointing at with regard to proliferation.

Number two, for propensity in not making less of it in terms of what I'm talking about, we kind of liken this to criminal mischief. It can be criminal murder if the right message is on the wrong person's car or vice versa. So I don't want to lessen this to criminal mischief, that's not what I'm talking about. This can be violent crime as well.

1	MR. BRAY: And that builds on what I wanted to
2	add which was on the criminal mischief aspect of it, that's
3	going to be difficult for the board to wrestle with because
4	I've been having many, many long, long conversations with
5	folks about plates in general, and one of the things brought
6	up to me just yesterday was certain folks at Texas A&M and
7	certain folks at Baylor don't much like each other and
8	you're liable to have criminal mischief keying of your car,
9	depending on which plate you happen to have and where you
10	happen to be located. So I mean, I don't think you can take
11	it to that level, maybe you can, but I think Chief Rodriguez
12	is talking about a more serious issue than college plates
13	probably.
14	MR. WALKER: Well, let the record reflect that it
15	will not be the Aggies keying the Baylor cars.
16	MR. ELLISTON: If I might make a comment. I

happen to like Mr. Walker here and since I'm a Baylor grad, I wouldn't key his car.

MR. WALKER: So we don't have a problem, it looks like.

MR. ELLISTON: But there may have been a few I've met that I might would want to, though.

(General laughter.)

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MR. VANDERGRIFF: Mr. Serna, can I task the staff to look into this question and to come back to us at the

next board meeting to address some potential additional standards to consider to address the concerns that Chief Rodriguez has raised?

MR. SERNA: Yes, sir. We'll do that

MR. WALKER: I have one comment to make. With respect to standardization, we left a standardized world two years ago when the legislature who makes the laws said this is what we will do and gave us instructions without restrictions on the design of those plates. How can we go back and say --

MR. GILLMAN: Well, there are some restrictions.

MR. WALKER: There are restrictions and we set the rules and the parameters, maybe, but we can't restrict, I don't think, especially the law says that we have a private contractor that has been given latitude to go out here and present plates to the state to generate general revenue for the State of Texas, and I don't know that this board has the authority to go back and standardize license plates.

MR. VANDERGRIFF: Pardon me if that came off. I don't mean to say standardizing license plates, but just to look at the standards in which we by rule can look at license plates and address the issues that Chief Rodriguez raised.

MR. WALKER: But Mr. Rodriguez's point is

1 something to standardize that plate is what he said. MR. RODRIGUEZ: Well, for example, let's say you 2 have any design of sorts, let it all be on the left one-3 quarter of the plate, and you put whatever you want on there 4 but at least they're all the same. You've got three 5 6 different ones right here, that's three today. We had what, 7 24 or some last meeting, and that's what I'm talking about. MR. WALKER: Well, Victor, I know a whole lot 8 about the plate program here and I've sat in a lot of 9 10 meetings with Steve and in committee stuff. 11 MR. RODRIGUEZ: I'm not challenging that. MR. WALKER: I understand that. But to make the 12 proposal that you're doing would absolutely hinder Mr. 13 14 Farrar's company the ability to do what they do. MR. RODRIGUEZ: And I value public safety greater 15 16 than his contract. 17 MR. WALKER: Well, okay. But the number one 18 selling plate today is the black star plate, the Lone Star 19 Black plate, and so if we went out here and said it's all 20 got to be on the left side, well, the Lone Star Black is all 21 the way across with a star across there, so don't we hinder 22 the ability of the best plate design out there? MR. RODRIGUEZ: Again, I think in the interest of 23

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I think out of fairness, it's not

public safety we ought to do something along those lines.

MS. RYAN:

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wrong to get more data, get more information, let the staff go back and do some digging. There may be some compromise that with My Plates we may get some happy medium. And then the criminal aspect and can we add to the criteria and then we know more. MR. RODRIGUEZ: I just made those observations. You were in discussion, Mr. Chairman. We're on the record on it.

MR. VANDERGRIFF: I appreciate those observations. I'm still tasking you.

MR. SERNA: Yes, sir. I understand the task.

MS. JOHNSON: One thing that I would like to remind everybody, because I do not disagree, I was on the road a lot this week and I could not tell if cars were Texas cars or not, I was having a very difficult time, and especially some of them still have the border, the covers that are advertising and frequently that covers up Texas, although I understand that's not allowed to happen.

MR. GILLMAN: It's against the law.

MS. JOHNSON: I know it is against the law but it doesn't stop people from covering up the State of Texas, they still put those frames on.

And I'm not certain with the propensity for crime is somebody stealing the plate or somebody keying somebody's car, and it's just like I have a personalized plate and I

took that risk, it was my personal option, and if having that plate on my car makes me a target, I've made that decision and I think we need to let the public make the decision, and we need to let Mr. Farrar's company continue to produce money for the State of Texas, especially in the environment that we're in today. And so I understand that there's concerns with ID for Texas. I have those personal concerns myself.

I don't know whether we can better define objectionable or misleading, we can look at the rules, but I think that it would be welcome. Absolutely I support the chairman's recommendation that staff at least look at the rules and see what we might can tweak to be able to perhaps address some of those public safety issues.

MR. BRAY: Right now your objectionable or misleading standard, you have to kind of bootstrap into it. The executive director can deny personalization of plates, as you were pointing out, based upon objectionable or misleading and there are five criteria: that's indecent, that it's vulgar, that it expresses hate directed toward a people or a group, that it references illegal activities or substances or implied threats of harm, or that it's a misrepresentation of law enforcement or other governmental entities.

That rule is about personalization, however, when

1	you get into specialty plates that rule is referenced as one
2	of the criteria the board can review as to the design. So
3	in a way, all of those things flow over into design as well
4	as uniqueness, competing with existing plates, legibility
5	and reflectivity and the other standards that we have in
6	rule.
7	MR. RODRIGUEZ: Again, I just wanted to put those
8	observations on notice for this board. Also for My Plates
9	as well, for their consumption and consideration and
10	liability concerns.
11	MR. VANDERGRIFF: And I appreciate that. We know
12	where we're going with Mr. Serna. We do have a motion and a
13	second. Do we have any further discussion or questions on
14	it?
15	MR. WALKER: Can you restate the motion?
16	MS. JOHNSON: To approve the vendor plates, Lake
17	Dallas ISD and University of Mississippi.
18	MR. WALKER: So we're doing just the top two
19	plates right now.
20	MS. JOHNSON: Right.
21	MR. WALKER: That's the motion. Okay.
22	
	MR. VANDERGRIFF: And we have a second from Board
23	MR. VANDERGRIFF: And we have a second from Board  Member Ryan. So with that, I will call for your vote to

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(A show of hands.)

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1	MR. VANDERGRIFF: All those opposed?
2	(A show of hands.)
3	MR. VANDERGRIFF: The motion carries seven to
4	one, with Board Member Rodriguez voting against and Board
5	Member Rush is absent.
6	The next plate we have is the non-vendor plate,
7	the Sons of Confederate Veterans plate.
8	MS. JOHNSON: I'd like to make a motion to
9	approve the non-vendor plate, Sons of Confederate Veterans.
10	MR. WALKER: Second it.
11	MR. VANDERGRIFF: We have a motion from Vice
12	Chair Johnson and a second from Board Member Walker. Do we
13	have any discussion?
14	(No response.)
15	MR. VANDERGRIFF: Seeing none, I will call for
16	you to raise your right hand in support of the motion, if
17	you would, please.
18	(A show of hands.)
19	MR. VANDERGRIFF: The motion has four for it.
20	And all those opposed, please raise your right hand.
21	(A show of hands.)
22	MR. VANDERGRIFF: Four. So the motion at this
23	point is stalemated. Do we bring this up next month?
24	MR. BRAY: Yes. You can bring it up any time you
25	choose. But for now it dies, but you can bring it up again
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if you'd like to.

MR. VANDERGRIFF: Well, we are missing one board member, so I think it's appropriate that we have that.

I failed to note, and I apologize, I was told that he did not wish to speak but we do have one person here that did wish to speak on this matter, it appears, and I apologize sincerely.

Commissioner Patterson, would you like to speak on it to us?

MR. PATTERSON: Mr. Chairman, I would.

MR. VANDERGRIFF: All right. Again, I apologize sincerely.

MR. PATTERSON: (Standing; difficult to hear.)

For the record, I'm Jerry Patterson, commissioner of the

Texas General Land Office, and our agency has sponsored, you

may recall, we sponsored one other plate prior to this

plate. I can't recall what that was for. And we gladly

agreed to sponsor the Sons of Confederate Veterans plate.

A point of information, you will see you have before you a plate application for Buffalo Soldiers Museum in Houston. Now, I understand that there's some controversy or some folks can conjure up some controversy, but I would submit to you that sponsorship of a Buffalo Soldiers plate should be equally as controversial, and frankly, therefore, should not be controversial at all, as an SCV plate, because

what did the Buffalo Soldiers do -- that's the African-American cavalry members of the 9th and 10th Cavalry who served on the Texas frontier in the 1870s and 1880s, but what did they do except to participate in a genocidal against an entire race of people, the American Plains Indians, and in effect, put that race of people into reservations.

The point is that both the Buffalo Solders and the Confederate Veterans, of which I am a descendent, served honorably, just as I served honorably in Vietnam and not all things in Vietnam were done in a manner that I'm proud of. I served in Vietnam but I'm not proud of what happened. This is history and any time you commemorate history and those who served honorably, be they Buffalo Solders, as you will see in a few months, I guess, at your next meeting a plate from the Buffalo Soldiers Museum, or the Sons of Confederate Veterans, I think they should be honored.

So I ask you at the time consideration or reconsideration, and I'd be happy to answer any questions.

MS. RYAN: I have a question for clarification.

Is there any consideration regarding the plate to use different symbols to represent the organization?

MR. PATTERSON: You know, I suspect the organization has looked at that. The symbol has been the same since 1897 when the organization was first formed, and

it's the flag that you will see. I think you're probably talking about the first national flag that flies at the State Capital, at the Lorenzo DeZavala Building, or flies at the -- what's the basketball stadium at UT? I'm an Aggie, I don't know. But that's the symbol, and while some may be taken aback, no one has a right to go through their life and never be offended if they're easily offended, and in this case I think that would be easily offended.

Again, the only difference is that today it's politically incorrect to talk about honorable service in the Confederate Army but it's not political incorrect to talk about honorable service on the frontier as a member of the Buffalo Soldiers, a plate that you will be seeing in the not too distant future for your approval.

I will also tell you that one of my heroes is a guy named Robert E. Lee, and Lee, while he was based in Texas in 1858 wrote a letter as this war was impending that decried slavery, and I quote, "as a moral and political evil." So to make this solely about that institution that many in the South also were not in favor of based in today's winds looking back, politically correct me if I think this is not the best thing to do. I submit to you we can say that same thing with the Buffalo Soldiers.

It's history. If you look at the Texas Capitol it's covered up with monuments, many of them have this flag

that apparently to some may be objectionable on those monuments today. No one has said anything about it. So I just think it's something that is worthy of favorable consideration.

MS. JOHNSON: Commissioner, if I can ask a question, isn't this something a project you've worked on for several years?

MR. PATTERSON: It has been, yes. We agreed to sponsor it and then it was over here initially approved and then there was some reconsideration by various board members as the board was made up at that time.

MS. JOHNSON: Overwhelmingly the comments in favor of this plate far exceeded the approval of the ones that we just approved. The public comment on your plate was 77 percent positive where the public approval on the other two were 33 and 49 percent, which is an incredibly different I like it. You know, they liked your plate, they really didn't like the other one, and I'll be honest with you, I have a friend who graduated from the University of Mississippi but I was somewhat offended by the hottie tottie. I know people will love that plate, but that wasn't something that I would drive around with.

MR. PATTERSON: And you'll find that logo on the SCV plate as you enter Galveston and you cross the causeway on the right. The SCV is an organization that meets there.

No one objects to it in Galveston. I think we may be making something out of nothing. In fact, I guarantee you there will be those who will raise a stink about it, and I will be glad to answer those. For any objections or any reaction, I'd be happy to take that on.

MS. JOHNSON: Thank you, sir.

MR. INGRAM: Let me just say I'm the new kid on the block, but Commissioner, I value your comments very much and I totally respect the organization and I totally respect the service that you put in. My hesitancy is not for the respect of the organization, I think my hesitancy is really going to back to Mr. Rodriguez's comments about safety, and while I don't find it objectionable, I'm afraid that certain members of the public might, and that's kind of where I get kind of concerned that maybe that is going to cause someone possibly harm because of that plate.

MR. PATTERSON: That's a choice that that person who seeks to put that plate on the vehicle has to make, and if you look at the fact that the logo in Galveston, which is a multi-cultural city, has survived without any objection, and if you look at the fact that until recently the flag that flew over there was -- I mean, this is the battle flag, the Stars and Bars is the one that looks like a Texas flag. Frequently people confuse those two distinctions. It hasn't happened. I mean, there's no evidence that that

would be the case.

MR. INGRAM: But my one exception or my problem is that that is an institution that is large and formal, this is an individual person driving around in a car that perhaps is on the wrong side of town at the wrong time of day with just one person, and so it's really not quite the same.

MR. PATTERSON: Well, it may not be quite the same. It's even more compelling that that one person had that choice.

MR. INGRAM: Absolutely. I agree with that.

MR. PATTERSON: And therefore, if they choose to do it -- which I don't think would put you in jeopardy -- but that's their choice, and it's not our responsibility to keep people from making choices that might prove to be dangerous.

MR. INGRAM: Thank you.

MR. PATTERSON: Thank you.

MR. WALKER: I would like to make some comments.

MR. VANDERGRIFF: We do have one other speaker.

Would you like to wait till after that speaker has comments?

MR. WALKER: Yes.

MR. VANDERGRIFF: And again, I apologize. This card just came up, and we do have Ray James, who is the commander of the Texas Division.

MR. JAMES: Thank you for the chance to talk to you about this. This is an important project for the Sons of Confederate Veterans. My name is Ray James. I'm a faculty member at Texas A&M; I'm a life member of the Sons of Confederate Veterans, I'm descended from five confederate veterans. My great-grandfather Ruben Jeptha Pickett served for four years in Company D 26th Mississippi Infantry. I can tell you where he was almost every month of that war.

Our objective in the SCV, our mission is to honor our ancestors and nothing else. We work hard to do that.

We are about 2,300 men in Texas. I say men because it's

Sons of Confederate Veterans. There's a United Daughters of the Confederacy, a women's organization that is related to us in that sense. But we are about 2,300 men in Texas, about 33,000 men nationwide with this mission. We put markers on graves, we put flags on the graves of these veterans, long forgotten by others, every Confederate

Memorial Day, April 26. Bryan City Cemetery will have 200 flags to honor those men on that day, well, 125, 200 in the county. Grimes County has 700 or 800 there. It's a big job.

We put markers up. Our camp erected in Brazos
County to Frank Simms is a good example of what we do.
Frank Simms is along-forgotten Confederate Veteran that
happens to be in the records of the Texas pension, if you

look him up it says Frank Simms, parentheses, COL, colored. We put a VA marker on his grave, we told his story on the back of it at our cost. The VA provided the marker, we put the inscription on the back that told the story of how this man went to serve as a black, we don't know as a servant or as a free black, but his commanding officer described how he picked up a rifle and fought. We honor these men who fought from 1861 to 1865 for Texas and Texans of all races, of all religions, and we do our best to do that.

The proceeds from this plate which could -- our division income, our budget for the year is about \$20,000 from dues and that's about our only income. The proceeds from this plate can easily double that, so can you imagine how many markers we can put up.

Our next project is a monument at Gaines Mill.

We're going to partner with Jerry Patterson's Land Office to preserve the valuable records and papers that he has. These are the things that this plate will allow us to do. It's very important for us.

With respect to safety, we ask you to remember that it's not your job to protect us from ourselves. We're willing to make the decision to fly that Confederate flag in our front yard, as many of us do, to honor our ancestors and to make it clear and do our best in every way we can to make it clear that these men need to be remembered.

I don't know what else to tell you except that our mission is going to be furthered by your approval of these plates. You asked questions about the history of the plate. We didn't have the chance to tell our story to the DOT committee that handled this in the first place. I think that hurt us. The process was flawed; I was not proud to be a Texan that day, I was not proud to be a Texan that day. It was handled by people who are bigoted and prejudiced. The definition of prejudice is to assume something about someone you don't know because of some symbol, and that group was prejudiced against us because of the symbol we fly.

There's been mention and description of the two flags, at least, of the Confederacy, the Stars and Bars which most people don't even know what that means but the Stars and Bars was the first national flag. The flag we use which is the battle flag is the flag of the soldier. We are not trying to honor the nation, the Confederacy -- we'd like to do that, we think that there were some good ideas and it was a second American revolution and that they were fighting for southern independence -- but we honor the soldier.

The battle flag was a flag designed on the battlefield by the Confederate military with the intention of preventing confusion between the U.S. flag and the flag that would fly over the Confederate troops. It is the

soldier's flag and it is our mission to honor the soldier, and that's why we use that flag. It is less politically correct, it's been abused, it's been used by hate groups, we regret that but we can't control that. We use it to remember the solider and we ask you to understand why we use it and to understand that we're trying to, if we can, redeem its value from what's happened.

And we very much appreciate Jerry Patterson and the Land Office in sponsoring this. We think it's going to be a good thing for the State of Texas, it's going to certainly be a good thing for the SCV. We hope that it will help us bring a little better understanding of what our members believe and why they fly that flag. It's important to us.

So I'll ask you to think about what Commissioner
Patterson said. I hope you will listen to what I've said.
I think this reflects the attitude of our members, certainly
the leadership in the Texas Division, and the members.

Do we have racists in our organization? I'm asked that all the time. And I say yes, probably the same percentage of racists that you have in your church. And I can say that sincerely, I believe that's probably true. But we're not a racist organization, we're open to all. General Santos Benavides, a Texan, his descendants are welcome, we would love to have them. The descendants of the Jewish

secretary of defense -- whose name escapes me right now; I'm not prepared, I'm sorry -- we would love to have his descendants. We have a black lieutenant brigade commander in West Texas; we have black members who are friends of our camp. It's hard for blacks to become full members because the Yankees burned all their records, they weren't kept for whatever reason. We do our best.

So I hope that if you have questions you'll ask, I'll do my best to answer them, but I hope you'll give serious consideration to what we ask which is approval of this plate. We've been working on it for 20 months, the process has been flawed, we're trying to be patient, but we need your support.

Thank you.

MR. VANDERGRIFF: Thank you very much, Commander.

I'll certainly let any board member make comment under the circumstances because I did not, inadvertently, allow testimony ahead of time, didn't have these cards, and since we have a tie vote, I'll bring this back up for reconsideration at our next board meeting. But if you would like to make a comment now, but like I said, I will bring this back up.

MR. WALKER: Well, I'd like to make a couple of comments. Number one is it's almost a slap on the face to this board right here to not approve this plate because we

have been instructed to go out and get public comments on every plate we've done. I sat there and asked this morning, without even any intention of this plate in my mind, but why do we go get public comments and we ignore the public comments that we get.

We have in this binder that is in front of you 186 comments that re for that plate from anything from black people to white people to Confederate veterans to Yankees. If you read the comments, obviously you'll understand that there is a huge sentiment to do this plate. You have only two comments against that plate that the public made, only two. And if you'll read your comments right here --

MS. RYAN: I think, respectfully, though, the comments are a portion of what we use to make decisions. If it was strictly public comments, we wouldn't have to vote. So the comments are used as a piece of information that allow us to either go do more research, to gather information to be able to sit here and vote on it, so I don't think they are the sole purpose.

MR. WALKER: I'll agree with you that they're not the sole purpose.

MS. RYAN: I don't know that that is the only thing we use.

MR. WALKER: But we are not even taking into consideration the public comments every time we approve

these license plates.

MS. RYAN: I think you can't speak for the board.

I read every one of these before the board meeting, and
based on those comments went and did some additional
research. So I think they are valuable, I also think they
are considered.

MR. WALKER: The other thing is that we have passed every single license plate that's been brought before this board with probably other considerations that should have been taken into account on this deal that have been as much offensive as this plate right here we're trying to approve.

The third thing we need to consider on this is it's a revenue source to the State of Texas that we're putting a block on and saying -- I don't know how many members Mr. Patterson has in his group over here, but I guarantee you they're going to sell thousands of those plates, from just the comments: I'll buy one of these plates, I'll buy one of these plates. We're throwing money away when the state needs money today and not even taking advantage of an opportunity to increase the coffers that we can do without taxing people.

And thirdly, let's remember about the constitution, the freedom of speech, and somebody says I want to take and say I'm proud of my heritage and we have

taken that ability away from those people and we've allowed somebody to say I'm a L.D. Falcon over in Dallas, Texas or I'm a Ole Miss fan in the State of Texas, but we're not going to allow our true heritage to go back and say hey, I'm a son of a Confederate veteran.

MR. RODRIGUEZ: Mr Chairman, we've called this thing. Can we move on? And by the way, I want to be clear that the conversation we had was in relation to items C.1 and 2, and somehow that's extrapolated over to C.3, and everybody has made the jump from that, including the professor from that university up just northeast of here.

So the conversation that I had with you was not about C.3, it's across the board, and not once did I mention C.3, again that was singled out here by the professor. Not once was that the item, and here we are doing the same thing, jumping back to C.3 from conversation was had on C.1 and 2.

MR. VANDERGRIFF: I strongly concur with you there, and I think I also noted earlier that you made your comments, this is not the first time you've made these comments. You've asked us in the past to review this, so I think that should be separated from this discussion.

I will say that I spoke that I will bring this up at the next board meeting, but I will also note for you that it is certainly permissible in this board meeting if any

1 member in the prevailing vote -- which in this case it was a tie, but I was going to say if anybody in the prevailing 2 vote would have the ability to bring this back up as an item 3 here today, but we don't really have a prevailing side. 4 5 MR. BRAY: As the chair you can entertain another 6 motion if someone chooses to make one. MS. JOHNSON: And I would like to make another 7 8 motion that we approve the non-vendor plate Sons of Confederate Veterans. 9 MR. WALKER: I'll second that motion. 10 11 MR. VANDERGRIFF: So you're making the same motion. All right. I will go ahead and call for any 12 13 further discussion on the motion. MR. BRAY: Given your possible confusion, I would 14 suggest to you that if this vote goes the same as the last 15 16 one, you no longer have to recognize that motion. 17 MR. VANDERGRIFF: Yes. I do understand that, and I appreciate that point. 18 19 We have a motion and a second, we're going to 20 have a second vote on this. Please raise your right hand in 21 support of the motion. (A show of hands.) 22 23 MR. VANDERGRIFF: All those opposed, please raise 24 your right hand as well. 25 (A show of hands.)

MR. VANDERGRIFF: The motion deadlocks again. I do think we have a nine-member board, so this can be brought up at the next board meeting and we will do that.

With that, I'd like to stay on item number 4 at the moment since we're in discussion mode on things, and move to 4.A, which is the organizational assessment contract approval.

MR. SERNA: Mr. Chairman, members of the committee. Staff has issued a request for proposal, received responses back from eleven vendors, evaluated eight responses. Three of the vendors were non-responsive in their submissions, either failing to complete all the requirements of the RFP, the request for proposal.

Staff evaluated eight responses, made a recommendation to move forward with one of those particular responses to negotiation. They negotiated over several days with that particular vendor, and we have a recommendation to move forward with a firm and request approval of the board to grant us authority to enter into an agreement with that organization.

At previous board meetings the board made it very clear that they wanted the organizational assessment to be done by June 30. The one that we've changed is we've moved out to July 20, I think, or July 22, because there were some delays in the procurement process and it would be unfair to

hold the vendor to the original timeline.

Staff is recommending that we move forward with the Azimuth Group proposal. We believe that based on the discussions with that organization and with the negotiations that we had with that organization that for the amount of funds that we had available they will provide the analysis and the information that we're looking for in the organizational assessment and will accomplish that in the timeline that we've set aside.

So staff recommends that the board approve our ability to enter into an agreement with Azimuth Group and begin that project.

MR. VANDERGRIFF: Do we have a motion?

MS. RYAN: I'll make the motion.

MS. JOHNSON: And I'll second.

MR. VANDERGRIFF: We have a motion by Board Member Ryan and a second by Vice Chair Johnson. Do we have any discussion?

MS. JOHNSON: I have a question and a comment.

MR. VANDERGRIFF: Vice Chair.

MS. JOHNSON: I'm going to make my comment first so the question can be answered. I want to say thank you to the contractor, or the vendor who is going to have this and the team who worked on this. On page 14 of their organizational proposal they made a comment that they

weren't going to be going back to the TACs again and asking them for more input, and I greatly appreciate that, and then number two, because they're ready for some of this to happen.

And then my only question, on page 8 it makes a reference at Stage 5 Transform, that the communication of the findings and results will be given to the organization, its leadership and stakeholders, and I wanted to ensure it was not going to be in that order, that the leadership, the board would receive the report first.

MR. VANDERGRIFF: Yes.

MS. JOHNSON: And that was my only question.

MR. SERNA: Yes, ma'am. We can certainly ensure that that occurs.

MS. JOHNSON: Thank you.

MR. RODRIGUEZ: I have one question, Mr. Chairman.

MR. VANDERGRIFF: Sure.

MR. RODRIGUEZ: Do we need to do this? You're the executive director of this agency, you've got 600-plus employees. I mean, there are many, many organizations in Texas that are a lot larger than that. Do you need this?

MR. SERNA: I think given everything that the board has tasked the staff to accomplish and the particular -- I'm sorry, let me directly answer your

question. I believe that the agency needs to go through all of the examinations that it's undergoing, the business process analysis, the infrastructure analysis and the organizational review. It's very clear to met that the board has a specific set of requirements.

MR. RODRIGUEZ: My question is -- I'm not talking about process analysis, we've done that already at the last meeting.

MR. SERNA: Yes, sir.

MR. RODRIGUEZ: I agree with that. The process analysis is how we, at the end of the day, service our community. This is about organizational assessment, and you're the executive director, and I'm asking you do you need someone to tell you how the organization is operating.

MR. SERNA: I don't think that I have all the tools that I need in order to thoroughly evaluate whether the organization is structured to meet -- the reason I go back to the board -- to meet the requirements that the board is placing on me and on the organization.

MR. VANDERGRIFF: Yes, sir.

MR. GILLMAN: Remember when this first came up, the first thing I turned to Ed and I said, Ed, isn't that your job? Well, they got me pretty convinced that this outside agency -- and by the way, the price, while it sounds ridiculous, is way lower than we expected and was negotiated

very favorably by our people, and I do think it adds some 1 credibility and does let Ed and our chairman and ourselves 2 to be able to sit back and look with an assessment besides 3 just Ed's. And plus, Ed has got a pretty big plate to take 4 care of right now anyway. So reluctantly I was for it. 5 6 MR. VANDERGRIFF: Any board members have any 7 further questions or comments? I guess I would just ask if there's 8 MS. RYAN: 9 any questions on information. MR. RODRIGUEZ: And the contract cost is? 10 11 MS. RYAN: The contract cost is \$457,400. capped it at \$500-, the bids I think set precedents, and 12 came in under that. And I'll mirror what Ramsay said, the 13 team did an excellent job working to make sure that the 14 needs were met, the scope was retained, timelines are tight, 15 16 and there was no scope creep. They did a really good job 17 making sure and defining what we needed and ensuring that 18 the contract would have that. 19 MR. VANDERGRIFF: Any further questions? 20 have a motion and a second. Please raise your right hand in 21 support of the motion. MR. BRAY: Could you clarify that the motion is 22 23 to authorize execution? 24 MR. VANDERGRIFF: I apologize. The motion is to authorize execution of a contract with the Azimuth Group for 25

1	the production of an organizational assessment.
2	So we have a motion and a second. Please raise
3	your right hand in support of the motion.
4	(A show of hands.)
5	MR. VANDERGRIFF: All those opposed?
6	(A show of hands.)
7	MR. VANDERGRIFF: The motion carries seven to one
8	with Board Member Rodriguez voting against and Board Member
9	Rush is absent.
10	I do also want to note that the services of Board
11	Member Gillman and Board Member Ryan, particularly Board
12	Member Ryan who put in incredible amount of hours on this to
13	get it right. So thank you very much. And then Julie
14	Beisert from the agency, as well as Mr. Serna and other
15	members of the staff.
16	MR. GILLMAN: And Ann Pierce too.
17	MR. VANDERGRIFF: Pardon me?
18	MR. INGRAM: Ann Pierce too.
19	MR. VANDERGRIFF: That's correct.
20	MS. RYAN: I'll add all the staff that worked on
21	the project were phenomenal.
22	MR. VANDERGRIFF: The next item is 4.B, which is
23	the expenditure of funds to refresh the county tax assessor
24	equipment. Mr. Serna.
25	MR. SERNA: Board members, you may recall that at

the last board meeting we presented a proposal requesting the board to authorize the staff to move forward with the procurement and with a plan to replace the existing equipment in the county tax assessor-collector offices and their subcontractor offices. At the time you asked us to go back and look at other alternatives in addition to just a straight procurement. Staff has done that.

We presented some information to the Projects and Operations Committee in a lot of detail. I can let the chairman of that committee discuss it, but one thing that I would like to summarize is the four options that were presented. The first option would authorize the staff to procure the equipment and then we would move forward with a contract to have a vendor support that equipment in the future. Options 3 through 4, with slight variation, were all the same in that they were basically a lease of the equipment or a full managed service where a vendor would procure the equipment, install the equipment and maintain it.

The three-year costs for all these options were evaluated as well as the speed of being able to get things done, and staff recommended to the Projects and Operations Committee and recommends to the full board that we proceed with the option that would allow the staff to procure the equipment and then secure a contract for long-term

maintenance on the equipment in fiscal years '12 and '13.

One thing to note, and Mr. Walker may bring it up, one thing to note is the committee made clear to the staff that as we proceed we're not just to go out there and buy the equipment without involving the TACs in our discussions concerning the replacement of the equipment at their subcontractor locations because there will be technology changes, software changes that may negate the need for equipment at some of those sites.

With that, I'd defer to the board to allow the staff to move forward on procuring and replacing that very old equipment that we have out at our county tax assessor-collector offices.

MR. RODRIGUEZ: So moved, Mr. Chairman.

MR. GILLMAN: Second.

MR. WALKER: Wait a minute, wait, wait.

MR. RODRIGUEZ: Sorry. You're running the meeting or the chairman is, just wondering.

MR. VANDERGRIFF: Well, I will ask you for discussion, but we do have a motion and a second, a motion from Board Member Rodriguez and a second from Board Member Gillman. And I assume the wait, wait, wait was discussion, although you kind of ran over the guy who was overseeing looking at this project which was you, Mr. Walker.

MR. WALKER: We had a Projects Committee meeting

this morning and discussed this in lengthy detail, and I thought that that's what we were going to do was when I brought up a committee report was going to make a recommendation to the board through the committee to vote on this particular issue. Mr. Serna has kind of explained our motion from the committee is what he's really done, with the exception of that there needs to be a little more detail in clarity in there as to our relationship and explanation to the board of how this is really being handled with the process.

And the process, and this is open to discussion, is that we currently have a process in place right now under information technology under our website web development to go to the vendors. The staff has recommended buying 2,600 computer laptops, stand-alone towers to go into our offices, the tax assessor-collectors' offices, and also into our third-party vendors which happen to be the grocery stores that do it, the pawn shops that have our machines to do license plates.

We don't need to go out, and we need to make sure that we explain this as it was proposed in committee this morning, that we do not go out and just buy 2,600 units to go into our third-party vendors, the grocery stores, because we have a web development going on currently which is going to allow those parties to take and use their own equipment,

which they want to do, and instead of us buying equipment to go down to H.E.B. and sit on their counter, which is strictly a piece of equipment that is used by our agency and can't be used for anything else and them having their own computer, we're developing and testing right now in Williamson County -- it started this month -- a system where they can tie into our system through a web browser, go in there and do this. So we will not need to buy equipment for 90 percent of our vendors out there which is about 1,000 units.

The proposed budget is for \$12 million to go spend on this equipment. We think, number one, we can get that equipment for a lot less than that due to the volume that we're buying which is going to take place through the DIR which is the Department of Information Resources, which is where we have to buy this equipment from, but by the volume that we're going to buy we can get it less than the \$12 million.

And number two is we don't think we need to buy as much equipment as proposed in this proposal to us because we don't think that we need to supply a thousand of these units, maybe 900 at the most, to those vendors that are H.E.B. stores, Kroger's and pawn shops and wherever else we have that equipment. So the directive needs to be that we go out there and first buy -- we do need to update our

equipment and we have \$9.3 million already in this year's fiscal note to take and spend it on this.

And the importance of buying this equipment that the board needs to realize is that in November of this year our service contractor who is maintaining that equipment has told us that the dinosaur that you're going to be operating we will no longer service, so we will be on our own at that time and will not be able to service this equipment. So it's not a system of do we want to buy this equipment, we have already got the money appropriated to do this, we have already budgeted this, and we're sitting facing hey, the systems are antiquated, they're old. Ms. Johnson right here can probably tell you, she has this equipment.

MR. GILLMAN: Johnny, didn't we just have a proposal to do all this, exactly what you're repeating to us again?

MR. WALKER: Yes, but I want to make sure.

MR. VANDERGRIFF: I was going to ask you if you wanted to amend this.

MR. WALKER: I want to amend the motion that we do not buy all of that equipment, that we buy that equipment only based on the need of the third-party vendors with a delay of the purchases on those third-party vendors until after the web browser system is out to see whether or not they use that.

1	MS. JOHNSON: And Mr. Walker, would you not also
2	like to add that we're selecting Option 1?
3	MR. WALKER: We are selecting Option 1.
4	MR. INGRAM: Mr. Chairman?
5	MR. VANDERGRIFF: Please.
6	MR. BRAY: Actually, hang on. You have a motion
7	to amend. You need a second.
8	MR. GILLMAN: I second it.
9	MR. VANDERGRIFF: I'm sorry. That's what I
10	thought Mr. Ingram was going to do.
11	MR. INGRAM: No.
12	MR. VANDERGRIFF: We have a second then from Mr.
13	Gillman.
14	You're speaking on the motion to amend at this
15	point?
16	MR. INGRAM: Yes, I am.
17	MR. VANDERGRIFF: All right.
18	MR. INGRAM: My question is that you seem very
19	certain that the clarity is there for the staff to
20	understand not to go out and purchase all the equipment.
21	MR. WALKER: That's what I want to make sure that
22	we don't do.
23	MR. INGRAM: Right. And so my question to you,
24	if you believe that you don't need 900 or so machines, why
25	don't you just modify the number that you want them to buy?

MR. WALKER: Because Mr. Serna, in the discussion 1 this morning, I don't think they know, and Ms. Johnson said 2 there are certain of her vendors that she knows will not go 3 into a website because it may be Joe's Bait Shop that the 4 tax assessor has an agreement with that doesn't have an 5 6 ability to even own a computer and we will have to go in and 7 put our equipment into those particular locations. 8 MR. GILLMAN: Or stop him from doing it. MR. RODRIGUEZ: Mr. Chairman? 9 MR. VANDERGRIFF: That is correct. 10 11 MR. RODRIGUEZ: This is an item that's carried over from the last meeting, and I think in total from both 12 meetings that I have enough information here. We have one 13 executive director, and that's Mr. Serna. 14 MR. VANDERGRIFF: No one is questioning that. 15 16 MR. RODRIGUEZ: I think he's asked for authority 17 to replace and refresh, and I made a motion to that effect. 18 MR. VANDERGRIFF: You can refuse the amendment, 19 but we do have a motion to amend. 20 MR. RODRIGUEZ: What I'm suggesting to you is 21 that's exactly what we're doing here. All of this is the same thing. We've got to leave this to him to administer 22 and to exercise his duties. 23

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for this board to oversee the fiscal policy of the agency,

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MR. VANDERGRIFF: Well, I think it's fair duty

and my understanding from the discussions that we've had here today and what I've heard from others is that the staff is also supportive of Option 1 with the ability under what they have discovered that they can scope that down considerably. Is that not true?

MR. SERNA: Yes, sir. And just to clarify, when I laid out the options — not trying to get ahead of the committee, but when I laid out the options the reason that I included the caveat that we would not procure any of the equipment for the subcontractors without input from the TACs was to, at a very high level, and to address Mr. Blake's comment, not specifically trying to tie us to a hard number but rather to defer to the 254 tax assessor-collectors because there may be several that say you know what, none of our subcontractors need that, there may be some that say yes, I have one or I have two, or all of mine do.

So I did attempt, and if I wasn't clear I'll get better at it next time, but I did attempt to say here's why we would move forward with input from the TACs to exactly address that discussion that came up in today's Projects and Operations Committee

MS. JOHNSON: And to further clarify, if I may.

One of the things that came up in the committee meeting this morning -- and I do believe the tape is available of that -- is I had mentioned that it references here that the DMV is

going to purchase and install cash drawers, till covers, 1 2 scan guns and accessories, and all of our cash drawers are recently new, and so in some instances it won't be necessary 3 to expend those funds. 4 5 MR. SERNA: In addition, yes, ma'am. 6 MS. JOHNSON: So what we were trying to target 7 too is when we looked at pulling some of those things out, 8 we're going to come closer to that \$9.2 million that's 9 available, but we don't know exactly what that figure is 10 until you conduct that survey. 11 MR. SERNA: And that's why it's important for us to include the TACs. 12 MS. JOHNSON: And this also ties to other 13 processes. 14 MR. RODRIGUEZ: To make my motion clear, if it 15 16 helps, you asked for authority to refresh county tax 17 assessor equipment, that's what you put forward. If we said 18 refresh county tax assessor equipment as required, will that be enough clarity? 19 20 MR. WALKER: No. 21 MS. JOHNSON: There were four options that were 22 presented. MR. WALKER: It's not just for the tax assessor-23 24 collectors, I think it's our own equipment, is it not?

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MR. RODRIGUEZ: Well, it's the only item on the

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agenda. 1 MR. SERNA: That option is the TACs and the 2 subcontractors. 3 MR. WALKER: Okay. 4 MR. RODRIGUEZ: So I'm just wondering, I go back 5 6 to my question, if I modify my motion to refresh county tax 7 assessor equipment as required, is that what he's saying and is that what everybody else is saying? 8 9 MS. JOHNSON: Yes. If you add under Option 1, I believe. 10 11 MR. SERNA: Yes, ma'am. MR. VANDERGRIFF: Mr. Serna is saying if you add 12 13 under Option 1. The language you just suggested and put under Option 1. 14 I move then to refresh 15 MR. RODRIGUEZ: Okay. 16 county tax assessor equipment as required under Option 1, 17 and on a sunny/rainy day -- no, I'm just kidding, I'm taking 18 that back. Refresh county tax assessor equipment as required under Option 1. Is that right? 19 20 MR. SERNA: Yes, sir. 21 MR. RODRIGUEZ: Then I so revise my motion, Mr. Chairman. 22 23 MR. VANDERGRIFF: All right. I have stepped, I 24 quess, a point of order out of line. We did have an 25 amendment offered to your motion from Board Member Walker.

1	MR. BUTLER: It could be withdrawn, couldn't it?
2	MR. VANDERGRIFF: Yes. That's why I'm asking.
3	MR. WALKER: I withdraw, because I think that
4	we're going to cover it there.
5	MR. VANDERGRIFF: Okay. So you're withdrawing
6	your amendment.
7	So if you can, Mr. Rodriguez, can you restate
8	your motion just so we can be clear then that Mr. Gillman is
9	seconding it?
10	MR. RODRIGUEZ: We have an item today, Mr.
11	Chairman, that says expenditure of funds to refresh county
12	tax assessor equipment. I move that we approve that and
13	that we move to refresh county tax assessor equipment as
14	required under Option 1.
15	MR. INGRAM: Mr. Chairman, that doesn't include,
16	though, the actual he's just mentioning the actual count
17	tax assessor equipment. We're doing all the equipment.
18	MS. JOHNSON: The subcontractors are under the
19	TACs.
20	MR. INGRAM: Okay.
21	MR. VANDERGRIFF: So by umbrella it covers them.
22	Mr. Gillman, do you second this motion? You were
23	the original second. You don't have to, someone else could.
24	MR. GILLMAN: Are you suggesting somebody else
25	would?

1	MR. VANDERGRIFF: I don't know.
2	(General laughter.)
3	MR. GILLMAN: Yes, I second the motion.
4	MR. VANDERGRIFF: All right. We have a motion
5	and a second. Any discussion?
6	MS. RYAN: Can I ask one clarifying question?
7	MR. VANDERGRIFF: Absolutely.
8	MS. RYAN: Based on the Option 1 is \$12.2 million
9	and it's been discussed that we have a budget of \$9.3
10	million, the motion is replace as recommended or needed,
11	where does the money come from if we exceed the allocated
12	funds?
13	MR. SERNA: The \$9.3- is in fiscal year 2011. We
14	anticipate and can't really say until the Appropriations
15	Bill has made it out of both chambers and everything, we
16	anticipate that there will be additional funds in the next
17	biennium with the next appropriation, but staff can't assure
18	that because that's exclusively a decision of the
19	legislature.
20	MS. RYAN: So we would only spend up to that
21	point until we know that. Is that correct?
22	MR. SERNA: Yes, ma'am. We can only spend what
23	we're appropriated.
24	MS. RYAN: I just needed to understand.
25	MR. SERNA: Yes, ma'am. I understand.

MR. VANDERGRIFF: Vice Chair Johnson has called 3 for a vote. So all those in favor of the motion please 4 raise your right hand in support. 5 6 (A show of hands.) 7 MR. VANDERGRIFF: All those opposed? 8 (No response.) MR. VANDERGRIFF: The motion carries unanimously 9 10 of the members present. Again, Member Rush is not. 11 I'm going to skip around a little bit because I think this case just has one person here, but I'm going to 12 item 3.C, and that's the consideration of the warranty 13 performance proposals, and I believe that case involves 14 15 Theodore Novosad v. Ford Motor Company. 16 Mark, you're up to tell us about this. 17 MR. GLADNEY: Good morning, Mr. Chairman and 18 board members. My name is Mark Gladney for staff. 19 Today comes before you this case, Novosad v. Ford 20 Motor Company which is a repair case brought to you under 21 2301.204 of the Occupations Code, where the complainant has alleged defects with his 2007 Ford F-250 truck in that the 22 allegation is that his 6.0 liter engine is defective. 23 Now, after numerous times with various Ford 24 dealers in two states attempting to fix the engine, the 25 ON THE RECORD REPORTING

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Thank you.

Call for a vote.

MS. RYAN:

MS. JOHNSON:

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problem still persisted. The complainant requested reimbursement of costs and that the engine be replaced. The engine was serviced for engine-related problems approximately seven times in about 19 months. There was a loss of use of vehicle for 72 days for June 1 of 2010 to August 12 of 2010 while it was being repaired in Loveland, Colorado. It was also repaired twice in Texas, in Cleveland, Texas and Amarillo, Texas. The complainant was forced to pay his own rental car expenses during the period of time, the 72 days in which the vehicle was held in Loveland, Colorado.

A SOAH hearing was held on October 5, 2010 in Lufkin, Texas. The PFD was entered December 1, 2010 recommending reimbursement of the complainant's costs and replacement of the engine.

In your packet you have a proposed order for repair with corrections, slight modifications to citations in the PFD pursuant to Government Code 2001.058, and the staff recommends adoption of the proposed order.

We have Mr. Novosad here today who would like to give a brief statement to the board.

MR. VANDERGRIFF: Mr. Bray.

MR. BRAY: Can I time out just a minute? Did we advise the parties how much time they would have for presentation?

1	MR. GLADNEY: I said ten minutes, if that's okay.
2	I'd also like to note Ford is not here today.
3	MR. WALKER: That's what I wanted to know. Ford
4	is not here?
5	MR. GLADNEY: Ford is not here.
6	MR. VANDERGRIFF: I will ask the board, just
7	since we've got a propensity to do this before, does the
8	board have any questions?
9	MR. RODRIGUEZ: May I ask a question, Mr.
10	Chairman?
11	MR. VANDERGRIFF: Please.
12	MR. RODRIGUEZ: And I'd ask this of our staff
13	member or general counsel. We may vacate or modify an order
14	issued by an ALJ only if we determine that the ALJ has
15	misapplied or misinterpreted, is that right, applicable
16	statutes, rules?
17	MR. BRAY: That's Criteria 1, yes, sir.
18	MR. RODRIGUEZ: Number 2, only if the ALJ relied
19	on a prior decision that is incorrect.
20	MR. BRAY: Criteria 2.
21	MR. RODRIGUEZ: And number 3, only if the ALJ has
22	made a technical error.
23	MR. BRAY: Yes, sir.
24	MR. RODRIGUEZ: And I'm asking the staff do any
25	of those exist in this case?
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1 MR. GLADNEY: Not in this case, sir. 2 MR. RODRIGUEZ: So we cannot modify the ALJ's decision and there is a recommendation. 3 MR. VANDERGRIFF: Well, if you decided that the 4 staff's analysis was flawed and that you found something in 5 6 one of those three categories that you objected to and can 7 convince the board otherwise. I want to make that distinction. I think I know where you're going but I want 8 to make that distinction. 9 MR. RODRIGUEZ: Well, there's a recommendation 10 11 that we adopt the ALJ's recommendation, and I think that we should do so, not only given the fact that none of the 12 criteria has been met to change it and that we proceed to 13 adopt that order, Mr. Chairman. 14 15 MR. VANDERGRIFF: All right. 16 MR. WALKER: I'll second that motion. 17 MR. VANDERGRIFF: We have a motion and a second. 18 Is there any discussion? 19 MR. INGRAM: Yes. I do have a question because 20 in the statement from the ALJ on page 7, it actually says 21 that to conform to the engine warranty it is ordered to replace the defective engine with a new engine, and if 22 respondent manufactures an engine that is redesigned or 23

updated, that they are to install a newer model motor.

not sure that the ALJ has that authority. Mr. Bray?

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MR. BRAY: Generally these provisions require, if the board so finds, a manufacturer to make a vehicle conform with its warranty. We probably want to talk with Mr. Gladney about this, but I think I understand Member Ingram's concern to be that Ford's warranty of this vehicle with this 6.0 liter engine does not include two generations later diesel engine as a replacement, and so I'm understanding Member Ingram's concern to be if the ALJ has misapplied the law by seeking to require Ford to go beyond the statute which is conforming the vehicle with its warranty.

MR. GLADNEY: If I may? It appears from the PFD that the ALJ relied upon our rule 215.208-8 and a portion of that particular rule states that however an order may be entered in any proceeding where appropriate requiring the repair work to be performed or any other action taken to obtain compliance with the manufacturer's/converter's/ distributor's warranty obligations. And I believe from reading the PFD the ALJ specifically emphasized the portion where it said or other action, and I think that's where the ALJ is coming up with this interpretation.

MR. VANDERGRIFF: Do you want to expound on that at all? Do you have anything that you want to add?

MR. BRAY: That, unfortunately, drops it in your laps to decide if the ALJ properly interpreted that provision or not.

MR. VANDERGRIFF: Well, we do still have a motion and we have a second of that motion. Did you have a question?

MS. JOHNSON: I'd like to hear from Mr. Novosad.

MR. VANDERGRIFF: Even though we do have that motion pending, you certainly have the opportunity and the right, Mr. Novosad, to address us.

MR. NOVOSAD: My name is Ted Novosad, Theodore.

I appreciate your time in giving me this opportunity to talk to you.

I did bring up in some of my notes that I wanted to bring to you some of the clarification of exactly what Mr. Ingram has said of replacing the engine with a new engine or taking other action, and I understand that about the newer engine being a new engine out today may not fit in my truck at that time. And what I have done, I've looked at this and I've done a lot of research and I have Ford's own documents from their lawsuit against Navistar where they took the position that the 6.0 liter was defective and they stopped making that engine because it cannot be fixed, they can't fix the problem. I mean, I have those documentations, they're in my original stuff that I went to court in Lufkin, of those statements from their own director of the Engine and Diesel Engine Services, Mr. Facetti, and a young lady, I don't recall her name off the top of my head.

1	But anyhow, what I am here to ask you all to
2	approve this that the ALJ did, but I also know that the ALJ
3	mentioned in his letter that the depreciation of my vehicle
4	due to all of these problems with the truck, I can't go out
5	and sell it to any of you because it's not a certified
6	vehicle anymore with all these problems, and I came here
7	today to ask for additional funds of \$6,450, and it's been
8	noted in the previous one, the judge even mentioned it, due
9	to that depreciation or diminished value of the vehicle.
10	MR. WALKER: Where is that?
11	MR. RODRIGUEZ: It's not in the proposed order.
12	MR. NOVOSAD: It's in the original. I'd be more
13	than happy to give you copies of this if you'd like.
14	MR. WALKER: But that's not a part of the
15	records, is it, today?
16	MR. NOVOSAD: It's in my original lawsuit.
17	MR. WALKER: But that's not the ALJ's
18	recommendation, is it?
19	MR. NOVOSAD: He mentioned it but he didn't put
20	it in.
21	MR. GLADNEY: It is not part of the ALJ's
22	recommendation.
23	MR. NOVOSAD: The only other thing I was going to
24	bring out today other than that was that I have been out
25	many expenses since because the truck will not perform, it

1 still has issues. MR. VANDERGRIFF: You've got a couple of months 2 of rent, you had a rental car for a couple of months. 3 MR. NOVOSAD: I had a rental vehicle and the 4 judge did grant me that. 5 6 MR. VANDERGRIFF: Right. Like \$3,500. 7 MR. NOVOSAD: Yes, sir. But I bought that truck 8 for a reason, they told me it would tow trailers, and 9 unfortunately, my job takes me far extends. I just finished 10 a stint in California, and I had to pay a company, by the 11 time I went out there and back, \$5,100 round trip to take my trailer out there and bring it back for me, money I 12 shouldn't have had to have been out. You go down to Ford 13 and you buy a vehicle that they tell you is going to do 14 something and it won't do it. 15 16 MR. VANDERGRIFF: I'm going to remind you that 17 you actually have a motion on the table and seconded, that 18 would be in your favor. So would you like us to go ahead 19 and consider that? 20 MR. NOVOSAD: Sure. 21 (General laughter.) MR. VANDERGRIFF: I understand, this is an 22 23 emotional moment and it's been a trying circumstance for

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MR. WALKER: Can I ask just a real quick

you, we can appreciate that.

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1 question, and it maybe doesn't apply somewhat, but Blake Ingram down here said that it's an updated version, and I 2 don't know what has Ford told you on an updated version, but 3 are we talking about going to the new Ford engine in this 4 truck or are we talking about an updated 6.0 liter engine? 5 6 MS. JOHNSON: It says new or improved. 7 MR. WALKER: Which creates a huge problem for Ford because all the wiring harnesses are all different. 8 9 MR. GILLMAN: That's exactly right.

MR. INGRAM: That's exactly my point.

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MR. WALKER: You can't do that, I don't think it's possible.

MR. INGRAM: Well, also too, and actually if we're approving the final order granting relief, it's not even in the final order that part about the upgrade to the engine, it's just replace the engine.

MR. VANDERGRIFF: Go ahead, Brett.

MR. BRAY: Let me try to help. As we're well aware of, as anybody in here, there are still 6.0 liter replacement engines that exist and I'm going to make the assumption that that's what's going to happen, and I can explain to you that this board's order will have to be followed in that way because the other won't fit, and what will happen is -- and you can check this with Mr.

Harbeson -- is if Ford won't replace this engine with a like

1	engine, then the agency would seek an enforcement action
2	against Ford. But I can pretty much assure you, given the
3	realities of the world, that the agency is not going to seek
4	an enforcement action against Ford for not putting in the
5	current generation.
6	MR. WALKER: The current generation.
7	MR. BRAY: Now, you can verify that with Mr.
8	Harbeson and Mr. Gladney, but that would be my
9	representation to you.
10	MR. WALKER: So it's not the new Ford engine
11	that's out, it's going to be a new 6.0 liter engine.
12	MR. BRAY: I don't see how it can be otherwise,
13	and I think that would be the agency's position. Now, if
14	Ford were here, perhaps
15	MR. WALKER: Well, I don't want to see them back
16	here two months from now saying that they didn't put the new
17	generation engine there because it's a problem.
18	MR. BRAY: And what I'm telling you, unless Mr.
19	Gladney jumps up and says otherwise, is that the agency will
20	not be requesting Ford to do that.
21	MR. WALKER: Okay.
22	MR. INGRAM: Does it need to be addressed in the
23	final order that we are looking at today?
24	MR. BRAY: I think it's pretty well addressed on
25	the record, Mr. Ingram.

1	MR. VANDERGRIFF: We have a motion and a second.
2	Any further discussion or questions?
3	(No response.)
4	MR. VANDERGRIFF: Please raise your right hand in
5	support of the motion.
6	(A show of hands.)
7	MR. VANDERGRIFF: All those opposed?
8	(No response.)
9	MR. VANDERGRIFF: The motion carries unanimously.
10	Our next item of business is to take up item
11	number 3.B on our agenda, which is consideration of a
12	franchise proposal for decision under the Occupations Code.
13	Ms. Cost is here to frame the case.
14	MR. RODRIGUEZ: I'm going to excuse myself, Mr.
15	Chairman.
16	MR. VANDERGRIFF: You're leaving for the meeting?
17	MR. RODRIGUEZ: Yes. I'm afraid that if I stick
18	it out we might have a 4-4 one again, so just to kind of
19	give us all the advantage, I'll go ahead and go now.
20	MR. VANDERGRIFF: So you took advantage of the
21	opportunity first before any of the others could.
22	MR. RODRIGUEZ: Yes.
23	MR. VANDERGRIFF: I always knew the chief was a
24	wise man. Appreciate you being here. Thank you, sir.
25	MR. RODRIGUEZ: Yes, sir.

MR. VANDERGRIFF: So we now have Board Members Rush and Rodriguez absent today.

Under the circumstances, given that I'm now fast losing one and then another board member, we're going to lose a quorum, so let's take a break until ten till 12:00. We will be in recess until ten till 12:00.

(Whereupon, a brief recess was taken.)

MR. VANDERGRIFF: I'm calling up item number 3.B on our agenda which is the UV Country, Applicant v. Mainland Cycle Center, d/b/a Mainland Cycle Center and Goe Kawasaki. I was going to say I'm looking for Ms. Cost and she's sitting right there.

MS. COST: Thirty more seconds, good morning, good day. For the record, I'm Molly Cost. I'm the director of the Motor Vehicle Division here at the Department of Motor Vehicles.

This case involves an application by UV Country to establish a new dealership to sell and service Kawasaki ATVs and to relocate the sales and service of its Kawasaki MULE line. Two franchised dealers initially protested this application, Mainland Cycle and Goe Kawasaki. Goe withdrew its protest before the case began and the case continued to hearing with UV Country and Mainland.

UV Country's current location is 5727 Hogue Street in Houston, and at the time of the hearing UV Country was licensed at this location for only one Kawasaki line make, the Kawasaki MULE. In May of last year UV Country filed a new application to relocate its dealership to 2616 Highway 35 Bypass North in Alvin which is located in Brazoria County. The portions of the UV Country's application that are relevant to this proceeding proposed to move the sale and service of Kawasaki MULEs to the new location and to add the Kawasaki ATV line as a new line at the Alvin location.

At the time of the hearing Mainland was licensed to sell and service Kawasaki ATVs, MULEs and motorcycles at 4009 Fleming Street in LaMarque which is located in Galveston County.

After receiving notice of the application,
Mainland filed a protest and the case was referred to the
State Office of Administrative Hearings for a hearing on the
merits. After conducting a hearing, a SOAH administrative
law judge issued an original proposal for decision on
December 23, 2010 recommending that UV Country's application
be denied. In response to the parties' exceptions and reply
briefs, the ALJ reconsidered the matter and issued an
amended proposal for decision on February 8, 2011,
recommending again that UV Country's application be denied.

The issue presented for the board's consideration is whether UV Country has shown good cause for its

application to establish a Kawasaki ATV dealership and for relocation of the Kawasaki MULE line to the new dealership location in Alvin.

In determining good cause, the board must consider seven factors: adequate representation of sales and service of the lines in question; whether the protestant is in substantial compliance with its franchise; the desirability of a competitive marketplace; any harm to the protestant Mainland; the public interest; any harm to the applicant UV Country; and current and reasonably foreseeable projections of economic conditions, financial expectations and the market for new motor vehicles in the relevant market area.

The ALJ found that the evidence introduced into the record does not support granting UV Country's application and recommends the application be denied. The ALJ found that UV Country met its burden of proof on two of the seven factors: public interest and harm to the applicant. The ALJ found that Kawasaki is being adequately represented in Galveston and Brazoria Counties, that Mainland is in substantial compliance with its franchise agreement with Kawasaki, that UV Country did not meet its burden of proof regarding the desirability of a competitive marketplace, and that UV Country's move will harm Mainland's business, and finally, that insufficient evidence was

presented to make a favorable finding for either party regarding the current and reasonably foreseeable projections of economic conditions, financial expectations and the market for new motor vehicles in the relevant market area.

In reviewing the amended PFD and preparing a final order for the board's consideration, staff noted the following concerns.

First, the ALJ includes in her discussion and findings information about Kawasaki personal watercraft, motorcycles and recreational utility vehicles. Since personal watercraft are not motor vehicles as defined in Chapter 2301 of the Occupations Code, discussion of them is not relevant to this proceeding. Also, neither Kawasaki motorcycles nor recreational utility vehicles are part of the application at issue in this proceeding.

If UV Country decided it wanted to sell and service Kawasaki recreational utility vehicles or motorcycles, it would have to submit another application that would trigger another opportunity for eligible surrounding dealers to protest. Therefore, staff recommends that references to personal watercraft, motorcycles and recreational utility vehicles be removed from the findings of fact adopted by the board, and that's reflected in the proposed final order that you have in your packet.

The final concern is that documents filed after

the close of the hearing and the issuance of the first PFD seek to introduce new evidence regarding numbers of vehicle sales and information regarding real property transactions into the board's decision-making process. Staff believes the ALJ's decision to base the amended PFD only on the evidence admitted into the record at the hearing on the merits before the ALJ is appropriate and recommends that the board not base its decision on evidence not already admitted into the hearing record.

As we've discussed at prior board meetings and earlier this morning, the law only allows an agency to vacate or modify an order issued by a SOAH ALJ if the ALJ misapplied or misinterpreted applicable law, agency rules or prior agency decisions, relied on a prior agency decision that is incorrect or should be changed, or made a technical error in a finding of fact. If a change is made, the agency must state in writing in its order the specific reason and legal basis for the change.

Based on this law, the staff recommends that the board concur with the ALJ's ultimate recommendation and deny UV Country's application, and again, there is a proposed final order in your packet under Tab 3.B that reflects this.

I'm available for any questions.

MR. WALKER: We have the parties here?

MR. VANDERGRIFF: We do, but I will ask first if

you have any questions of the staff on the presentation of 1 2 it. (No response.) 3 MR. VANDERGRIFF: We do have both parties here. 4 I'm going to allow ten minutes -- that doesn't include 5 6 questions; you might be stopped for questions, of course --7 ten minutes for both sides to make their presentation. And with that, I would call up Jarod Stewart for UV Country. 8 MR. STEWART: Mr. Chairman and members of the 9 10 board, good day. My name is Jarod Stewart and I'm proud to 11 represent UV Country here today in this matter. Would it be permissible to reserve some of my 12 time for rebuttal? 13 MR. VANDERGRIFF: I was going to give you five. 14 15 MR. STEWART: Thank you very much. 16 MR. VANDERGRIFF: I apologize for not saying 17 that. 18 (General talking and laughter.) 19 MR. STEWART: Mr. Chairman and members of the 20 board, the issue before the board today is whether UV 21 Country, a small growing business, family-owned, should be allowed to relocate its business from South Houston where it 22 23 has an inadequate and cramped location to Alvin where it has

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demands of its customers, or whether UV Country's business

an adequate location to serve its needs and to meet the

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should be stifled and severely harmed in order to protect

Mainland Cycle Center from speculative potential harm simply

because UV Country will be located 17-1/2 driving miles from

Mainland Cycle Center, and thus closer or more convenient to

a small portion of Mainland Cycle Center's prior customers.

Section 2301.652 of the Occupations Code was not designed to accomplish that objective. The overriding consideration is the public interest, to ensure that the public has as many options available as possible and that those options are available to the public. Therefore, the provision was designed to ensure that dealerships would have the opportunity to protest so that they would not go out of business. If a dealership goes out of business because of a relocation or a move, obviously there are fewer options for the public, and therefore, the public interest would not be served by that relocation.

Mainland Cycle Center will go out of business as a result of UV Country's relocation to Alvin. In fact, as far as Kawasaki dealerships go, UV Country and Mainland Cycle Center could not be any more different. One has to look no further than the name itself. U-V stands for utility vehicle; Mainland Cycle Center emphasizes cycles.

Moreover, the two dealerships serve different markets. There as undisputed testimony from third-party

witnesses that the Alvin area and the Galveston County area are different retail markets, that based on the prevailing traffic patterns on the north-south major arteries that you can see on the map there, the I-45 and Highway 35, that because they serve different retail markets they are not direct competitors. Secondly, they are located 17-1/2 driving miles away from each other. They are not overlapping in these areas.

They have different customer bases. The evidence shows that in 2010 81 percent of UV Country's business was to government and fleet customers. Mainland Cycle Center had less than 1 percent of its business to government and fleet customers. Additionally, the majority of UV Country's sales are to customers outside of the Houston area, thereby not posing any risk of harm to Mainland Cycle Center.

Mainland Cycle Center, 60 percent of its revenues come from motorcycles and jet skis, vehicles that UV Country does not sell and has not applied to sell, and UV Country's relocation to Alvin would not affect Mainland Cycle Center's sales of 60 percent of its business in any way. And therefore, they focus on different products.

UV Country initially applied to relocate the MULE line to the new location in Alvin. It added the ATVs when its government customers had inquired about bids on ATVs and whether they could provide those. And so the issue is UV

Country wants to relocate its business because the location in South Houston is too small to meet its needs, it is in an industrial area, has a small warehouse building on a small lot insufficient to meet its inventory, insufficient to meet the needs of customizing vehicles for its government customers, including the United States Special Operations

Command which uses those vehicles in military operations.

And so UV Country has outgrown this location which it has owned since the late 1980s due to its growing business.

UV Country is owned and operated by Shannon and Scott Tracy who are seated behind me. They have two sons, Michael and Ryan, who are next to them. Ryan works as a technician at UV Country.

UV Country has been successful due to its hard work and ingenuity. As I said, they've obtained several government contracts through competitive bidding to provide utility vehicles, the Kawasaki MULE and the Kawasaki TERYX. They also provide unique and unparalleled outfitting of these vehicles. As I said, they provide modifications and outfitting for SOCOM, the Special Operations Command to outfit these side-by-side four-wheel vehicles that are primarily used off road for use by the military. They also do outfitting for outdoor enthusiasts and hunters, and they provide those services like no other dealership.

And through that work they've become, in just

eight short years, the number one utility vehicle dealership for Kawasaki in the nation. They started out with two employees and today they have 16, and that growth is because of their hard work and their ability to do what no one else can do like them in the utility vehicle market. That's because utility vehicles are their focus. They've also had significant advertising expenses and community outreach.

As I said, they have the SOCOM contract is one of the main government contracts they have. They obtained that through competitive bidding in 2009. It's a five-year contract to provide 1,625 vehicles. You can see those are the vehicles that are being inspected by government officials there for the SOCOM contract. They've also provided vehicles for emergency response teams in the community and outfitted them to their needs.

So you UV Country focuses on utility vehicles and they also do that increasingly through government and fleet customers that would like the specialized options that UV Country can provide with these vehicles that are multipurpose vehicles. And you can see that UV Country has increased the percentage of its sales to government and fleet customers which are the overwhelming majority of its business. And as I said, they also provide customization options.

And they have substantial advertising

expenditures when compared with other dealerships. They are significantly involved in the community. Again, they are located in an industrial, metal welding area without a visible location, so they've themselves out there in the community and that's another reason for their significant success and their substantial growth through the last eight years.

And as you can see, the pictures tell the story. Simply put, this small, cramped location is insufficient to meet UV Country's needs. UV Country has actually had to perform work at off-site facilities, out of state, government-owned facilities to perform the customization and work that needs to be done to meet the demands of these government and fleet contracts, and that comes at significant expense to UV Country when they have to be working in multiple locations and storing vehicles offsite and performing work in driveways and storing vehicles in crates. Again, you can see that the work is difficult to do in this small location in South Houston.

UV Country has located an adequate location in Alvin, a former Dodge dealership, it has adequate space to meet its needs, adequate space to allow it to perform all the customization work that it needs to do to fulfill its government contracts, and will allow UV Country to continue to grow its business as it has done so far and been

successful.

More than two years ago Mainland Cycle Center relocated for nearly identical reasons. Mainland Cycle Center was located in Texas City with a small location that required offsite storage. They've moved to a large location to avoid having offsite storage and all of the costs that come with that.

Mainland Cycle Center will say that the difference between the relocation is that no one was within 15 miles of Mainland Cycle Center, but frankly, UV Country looked at the location in Alvin and saw that it was over 17 miles driving, was not aware that it was within the right to trigger a protest until after the application had been filed.

MR. GILLMAN: Can we ask questions now, Victor?

MR. VANDERGRIFF: You're always welcome to ask at any point in time. He may be about done.

MR. STEWART: I was just going to cover the three areas where we believe the ALJ misapplied the law on the factors.

As Ms. Cost stated, there are seven factors in determining whether UV Country has demonstrated good cause and I will focus on three of those factors: whether Kawasaki is adequately represented, whether there's harm to Mainland, and whether there's a competitive marketplace.

I would just note the reason there was an amended PFD was that the first PFD did not include consideration of all seven factors.

First with respect to the harm to Mainland Cycle Center, the ALJ based the decision on testimony that Mainland Cycle Center would lose sales because UV Country will be closer to it. Under Texas law it's clear that speculation that the protestant will lose sales simply because the applicant will be located closer to some of its customers is insufficient evidence of harm.

MR. VANDERGRIFF: I just want to note you're using up some of your extra five minutes for rebuttal here.

MR. STEWART: Okay.

Again, even accepting the estimates of harm that Mainland Cycle Center's president has offered, a 10 percent loss in sales is insufficient evidence. UV Country is not required to show a complete lack of harm, it's only substantial or material harm that would pose a risk of Mainland Cycle Center going out of business and leaving one fewer option for the public that would be enough to find against UV Country on this factor.

And it's important to note that if you look at reality on this map here, UV Country has been located for years only four miles from a full-line Kawasaki dealer and only eight miles from another Kawasaki dealer, and they've

done business just fine. John Thompson, the owner of the dealership that's four miles away testified that he's been able to do business just fine because they do different things. He's a full-line dealer, UV Country sells only utility vehicles, they sell to government customers and they sell largely outside the Houston area, and they've been able to operate just fine without any substantial harm to Mancuso or to Pasadena Kawasaki, both of which are located close to UV Country's Hogue Street location.

And that dovetails with the desirability of a competitive marketplace. If you look at the big map, there's a big gap where the proposed location is in Alvin with no Kawasaki dealerships, and that will provide more options for the public, and because there's no evidence that Mainland Cycle Center will go out of business, granting the application would be desirable for a competitive marketplace.

For those reasons, UV Country believes that the ALJ misapplied the law with respect to the harm to Mainland and whether granting the application would lead to a desirability of a competitive marketplace. It will foster healthy competition by providing more options for the public and increased visibility and brand awareness of Kawasaki.

Also with respect to adequate representation, the relevant market area is Alvin, and the ALJ's findings were

only with respect to Brazoria County. Kawasaki does not have a dealership in Alvin, no dealers advertise in Alvin.

Mainland Cycle Center has only sold a few MULEs with a retail trade area of 70,000 residents, and Kawasaki approved the relocation to Alvin.

And so for these reasons, what the ALJ has found that it will severely harm UV Country, that it will serve the public interest, and we believe that the factors with regard to harm to Mainland are insufficient as a matter of law, the ALJ misapplied the law with that and on the competitive marketplace, and for those reasons we request that the board would grant UV Country's application.

I've prepared a proposed final order that takes what staff has done and adds the necessary adjustments to find for UV Country on these three factors, and I'm happy to tender that to the board.

MR. VANDERGRIFF: Thank you very much. You did eat into your time so your now down to that one minute for rebuttal, or close to it.

But I did want to ask, I know that Board Member Gillman indicated that he might have a question, and maybe some of the other members do as well.

MR. GILLMAN: You say it's 17 miles, did you say?

MR. STEWART: Driving it's 17.65; as the crow

flies it's 14.36.

1	MR. GILLMAN: And our consideration is 15 miles
2	and/or the same county. It does not fall in the same
3	county?
4	MR. STEWART: It does not fall in the same
5	county, it falls within 14.36 miles as the crow flies.
6	MR. GILLMAN: Thank you. As the crow flies it's
7	14, driving it's 17, which our deal goes by the crow.
8	MR. VANDERGRIFF: That's correct.
9	Mr. Walker.
10	MR. WALKER: Just a real quick question. Your
11	current location on Hogue Street, that's not even a retail
12	location, is it?
13	MR. STEWART: It is not. It is in an industrial
14	metal area.
15	MR. WALKER: That's in an industrial area.
16	MR. STEWART: Difficult to find. Customers often
17	drive by because they don't even know it's there even when
18	told where the address is.
19	MR. VANDERGRIFF: Any other questions of Mr.
20	Stewart at this point?
21	MS. RYAN: I have a question for staff. There
22	were two additional lines with the relocation that are being
23	added that are new?
24	MR. STEWART: No. UV Country has applied to
25	relocate the MULE line which is the utility vehicle and

wants to establish ATVs, given the demand for the government 1 2 contracts bidding on ATVs. Those are the only two lines at issue in this application. UV Country has not applied for 3 any other lines, and Mainland Cycle Center sells five lines. 4 MR. VANDERGRIFF: Any further questions? 5 6 MS. JOHNSON: Question of the staff. If it's 15 7 miles as the crow flies, and I don't know if that's in law or rule, it doesn't look like those two that there's the 8 9 inner loop and then there's the Beltway, are those actually 10 15 miles apart? It doesn't look like it to me. 11 that are up there -- I'm familiar with Houston -- there's your big symbol in the middle and then to the right two Ks. 12 MR. STEWART: May I proceed to the map? 13 If I can jump in. MR. VANDERGRIFF: 14 MS. JOHNSON: My question is are those others in 15 16 compliance with the 15-mile radius. 17 MR. VANDERGRIFF: It's not a compliance issue. 18 You can be closer than 15 miles, it's just you have a right 19 to protest. 20 MS. JOHNSON: To protest. So there's nothing to 21 stop two dealers even being side by side if it doesn't hurt the market. 22 23 MR. GILLMAN: If everybody agrees. 24 MR. STEWART: May I address that? And Mancuso 25 relocated to that area and neither UV Country nor Pasadena

2 MS. JOHNSON: Thank you. MR. VANDERGRIFF: Any further questions at this 3 point? 4 5 (No response.) 6 MR. VANDERGRIFF: Seeing none, obviously you're 7 not leaving so we'll see you back up. 8 We do have now Omar Mason here for Mainland Cycle 9 Center. 10 MR. MASON: Yes. 11 MR. VANDERGRIFF: And I'm going to give you twelve minutes just to be fair. 12 13 MR. MASON: Okay. Thank you. Thank you to the board and chairman for giving us 14 15 the opportunity to speak today. I want to address a few 16 things that Mr. Stewart mentioned during his presentation. 17 First of all, he mentioned that these two 18 companies, these two businesses focus on different products. 19 That's not the case. The issue before this board, the 20 issue for consideration is the license application for ATVs 21 and UTVs. Mainland Cycle Center sells both ATVs and UTVs; UV Country already sells UTVs and they are applying to sell 22 ATVs. So I want to make that clear, first of all. 23 want you to focus on is the products or the vehicle lines 24 25 that are at issue in this matter.

1

Kawasaki protested that move.

As determined by the administrative law judge and director, UV Country has failed to meet its burden of proof. We had a full hearing on this matter. We presented evidence. I have to say it's not going to do justice to try to sum it up in twelve minutes. We did have a full hearing on this matter, we presented evidence on both sides, both sides had adequate opportunity to present their evidence and their testimony, and the administrative law judge issued her proposal for decision accordingly.

First, one of the good cause factors that shall be considered in an application for a license is whether or not the applicant has proven that Kawasaki is not being adequately represented as to sales and service in the area of the proposed relocation site. First of all, Mainland is, in fact, less than 15 miles away from the proposed location site and another same line make Kawasaki dealership Goe Kawasaki is located in the same county of the proposed site, so they are represented in that general area.

Over the year Mainland, as a Kawasaki products dealership, has exceeded Kawasaki's expectations with respect to sales in the relevant market area. During 2007 to 2010 it alone sold more ATVs and UTVs than Kawasaki dealerships in Brazoria, Chambers and Fort Bend Counties combined. Without doubt, the product line is adequately represented in the relevant market area.

UV County also has failed to bring forward any competent evidence to suggest that Mainland is not in substantial compliance with the Kawasaki franchise requirements. To the contrary, the evidence presented reflected that Mainland did achieve the distinguished Kawasaki Silver Level Ichiban award over the past several years for its outstanding performance as a Kawasaki franchise. Mainland has also met all mandated Kawasaki service training requirements over the years and has never had its franchise license to sell and service Kawasaki products revoked or suspended.

Another factor is that UV Country has failed to present any competent evidence of the desirability of a more competitive marketplace in the area surrounding its proposed relocation site than what already exists. Mainland, an authorized same line make Kawasaki dealership, is already located within the 15 miles of the proposed location, Goe Kawasaki is located in the same county. Both of these are same line make dealerships in that area.

Evidence was presented to show that the market area encompassed with the 15-mile radius is already geographically and demographically limited. And what I mean by that is -- I'm not sure if you can see this very well -- these are the coordinates for the geographic location of Mainland posted here, latitude and longitude, and we took

these coordinates and put that on a map that adequately reflects the 15-mile radius surrounding Mainland's current area.

And what you would see from this map, what's distinguishing about this map is that Mainland Cycle Center which is located here on this map, if you look south of it you see a major body of water and areas that are sparsely populated, very sparsely populated areas south in Galveston County. Mainland's customer base focuses, because of these geographic limitations and demographic limitations, focuses on the north and northwest portions of Galveston County which are directly adjacent the proposed location site of UV Country's proposed same line make dealership.

And why does that pose a problem for Mainland? In 2007, 42.38 percent of Mainland's ATV sales and 36.5 percent of its UTV sales would have been jeopardized if a same line make dealership was located within the 15-mile radius.

MS. RYAN: Did you say in 2007?

MR. MASON: This is 2007. In 2008, 54.95 percent of Mainland's ATV sales and 16.67 percent of its -- I'm sorry, RUV sales are not at issue. In 2009, 48.55 percent of Mainland's ATV sales and 50 percent of its UTV sales would have been in jeopardy had another dealership been located where the proposed relocation is in Alvin for UV

Country. And in 2010, 34.68 percent of Mainland's ATV sales and 42.96 percent of its UTV sales would have been in jeopardy.

These numbers come from the manufacturer's warranty registrations which was presented during the hearing to show the breakdown of the customer base in those areas of Galveston County.

MR. VANDERGRIFF: Did you see on the slide -- and I apologize for not having numbers -- was this discussion at the hearing on the numbers that were presented by the applicant at the hearing? I mean, he had very low numbers for your amount of sales.

MR. MASON: And he's considering all products. He's considered all product lines sold by Mainland. We're focusing on the ATV sales and the UTV sales that are at issue in this matter, and that's why we say there's a distinction.

MS. RYAN: May I clarify one point? You said that those percentages were based on warranty registrations, not necessarily sales, so that's where the consumer owns. But Mainland sold those vehicles and they live in the area, not just registrations?

MR. MASON: That's where the sales were, but based on warranty registrations reflect on new vehicles . These are only on new units.

1	MS. RYAN: That Mainland sold.
2	MR. MASON: Yes.
3	MS. RYAN: Thank you.
4	MR. INGRAM: May I ask real quick if you could
5	take those percentages and put them into real numbers?
6	Because percentages are sometimes difficult, depending on
7	the size of the numbers.
8	MR. MASON: Sure. In 2007, 41 UTV units were
9	sold, and 36.5 percent of that represents the areas that we
10	feel would be in jeopardy.
11	MR. WALKER: Here's my question, I guess. You're
12	bringing up this 15-mile radius deal and I'm not so sure
13	what the relevance of this other than the fact that you have
14	the right to protest within a 15-mile radius is all my
15	understanding is.
16	MR. MASON: Sure.
17	MR. WALKER: Is there anything in the law that
18	says that 15-mile radius is your territory?
19	MR. MASON: No. There's no law. We have a right
20	to protest.
21	MR. WALKER: So what the issue on the 15 miles is
22	is that 15 miles is only the area that you have the right to
23	protest within.
24	MR. MASON: Sure, yes.
25	MR. WALKER: But you're stating sales within that

15-mile radius but some of your sales may also be -- if I took that Kawasaki dealership right there on 45 at the Beltway up there and I drew a 15-mile radius around that and I took and went to your dealership and drew a 15-mile radius around that, I bet we've got a seven-mile overlap in your two territories, the way you're explaining this. Correct? You would agree to that, or not?

MR. MASON: There's currently no other Kawasaki dealership within a 15-mile radius of Mainland.

MR. WALKER: But your 15-mile radius overlaps the 15-mile radius of both of those northern dealership north of your dealership. Would you agree to that or not?

MR. MASON: No, they don't overlap. There are no other Kawasaki dealerships within a 15-mile radius currently of Mainland.

MR. WALKER: (Standing by map; not directly by microphone.) No, no, no. I would disagree with you because this location -- and the only reason I'm doing this is I'm just trying to make a point here. If you drew a 15-mile radius around this, would you agree that that would come down to about here?

MR. MASON: Oh, I see what you're saying.

MR. WALKER: Do you see this right here? The pencil right here is 15 miles according to this. If I drew a 15-mile radius right here and this is your dealership.

1 Right? 2 MR. MASON: Absolutely. MR. WALKER: So now if I drew a 15-mile radius 3 right here, this area right here is also this territory of 4 this the way you're trying to state this. 5 6 MR. MASON: I agree. 7 MR. WALKER: And with this location right here. So if you're going to give us details on how this affects 8 your sales, you'd also have to take and reduce the amount of 9 10 sales that you really -- do you have data that says we 11 didn't make any sales in this because this is part of this quy's territory? 12 MR. CROW: You're right, the customers tend to 13 gravitate to what's closer, and so I actually don't sell a 14 15 lot of units to the north. 16 MR. VANDERGRIFF: Can I interrupt you for a 17 second to make sure that you put your name on the record. 18 MR. CROW: My name is Albert Crow. 19 MR. BRAY: Mr. Chairman, there's going to be a 20 large gap in the record because nothing that Mr. Walker said 21 was picked up, the court reporter was not able to obtain it. And when the gentleman turns his head toward the easel, 22 nothing he says is being picked up either. 23

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is indicating she did get it, but I would ask that you

MR. VANDERGRIFF: Fortunately, the court reporter

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25

maintain at a microphone.

MR. CROW: My name is Albert Crow from Mainland Cycle Center. And you're right, customers do tend to gravitate towards dealers that are close to them, and because of that, the biggest problem we have with their move is the geography because I can't sell to customers in the Gulf of Mexico. To the direct southwest of me not very many people live there, so there's not very many folks there to buy from me, and so the majority of my sales for these type of vehicles come from the northwest part of Galveston County, and where UV Country wants to move is just outside the Galveston County line, and that's why it's a problem for us. We're not against them upgrading their location at all.

MS. JOHNSON: Sir, if I may ask a question.

MR. CROW: Yes, ma'am.

MS. JOHNSON: I think that red line is FM 517 which goes through Dickinson. Where you are located isn't it the more likely path of people -- it looked to me like the large number of your customers were probably in the Santa Fe/Alvin area perhaps. Santa Fe, but that's a totally different route to get to this new facility than that little shortcut across the county. And in the north part of the county, I live up there, and that's like residential, there's very little farmland up there, so I'm surprised you're selling a lot of MULEs in that area. Is that just

people buying them and maybe using them for vacation 1 vehicles, perhaps? 2 MR. CROW: Maybe I didn't understand which part 3 of the county you were talking about. 4 MS. JOHNSON: When you talk about the northwest 5 6 side of Galveston County, that's not a rural area at all. 7 MR. CROW: No. We're talking about the rural 8 area being along FM 2004. But because Santa Fe and Alvin, 9 that is more rural than, say, Texas City. Many of those 10 people tend to have one acre homes and stuff where they'll 11 buy an ATV or MULE to work around their home. customers of mine that are in Santa Fe, now it's almost 12 equal distance whether they drive to Alvin where there's a 13 lot of business and stuff going on, or they drive down to 14 me, and so all of those customers now are at risk for me. 15 16 MR. VANDERGRIFF: I'm going to note that we've 17 asked some questions but you're over the time limit since 18 we've asked questions so I want to make sure I give you 19 plenty of time to get your presentation in, so if you can do 20 that in the next three or four minutes. 21 MR. MASON: Sure. Thank you. I'm close to 22 wrapping up. Thank you. 23 MR. VANDERGRIFF: Before we ask any more 24 questions, I just want to make sure you got that in. 25 MR. MASON: Sure. And that goes to the

mentioned earlier, was the geographic limitations as far as the south portions. That issue is important, is very important with the water-occupied and sparsely populated areas to the south-southwest portions of the county, so important that if you notice on the map -- this map was presented during the hearing to show the coordinates and to show the different customer base -- you notice the body of water here is in there. You notice that on UV Country's map they've removed those bodies of water by whiting them out.

Mainland that they are geographically limited. Yes, they chose that location from building a building from ground-up, doing the research making sure that it's not a protestable move under the statute. That's the difference is that when they built their dealership from the ground-up in LaMarque, they took that into consideration, yes, but they also considered the fact that there was no other Kawasaki same line make product dealership within that 15-mile radius. So it is Mainland's contention, as presented during the hearing, that the move will be harmful to Mainland's business.

Finally, nothing more than argument was presented by UV Country at the hearing with respect to the current and reasonably foreseeable projections of economic conditions,

financial expectations, and the market for new vehicles in the relevant market area. Absolutely no evidence in the form of studies, surveys or other competent research results were presented or offered by UV Country to attempt to meet that burden and that good cause factor.

While Mainland does not concede to the ALJ's proposal with respect to the remaining factors, such as harm to the applicant and the public interest, we suggest that the totality of the factors given as a whole, based on the evidence and testimony presented at the hearing that was weighed thoroughly by the administrative law judge should be upheld in favor of denying the application of UV Country.

MR. VANDERGRIFF: We may have some more board questions. Do we have any board questions?

(No response.)

MR. VANDERGRIFF: So you have a couple of minutes.

MR. STEWART: Thank you.

I'll just address a couple of the points that Mr. Mason made.

MR. VANDERGRIFF: Actually, I apologize. I may ought to let you hold that thought because we did have a couple of speakers who wish to testify on this that had come up, and you may want to reserve your time until after they've commented. Would you prefer to do that?

MR. STEWART: I'm fine to just speak now while it's fresh, and they can make their comments.

MR. VANDERGRIFF: Okay. Go ahead.

MR. STEWART: First, Mr. Mason mentions the water that's surrounding Mainland Cycle Center. I'll first note that Mainland Cycle Center sells jet skis, that's helpful to them. Second, there are no territories. Kawasaki does not grant an exclusive territory to anyone, they're free to sell anywhere they ant. And also, it's not the geographic limitations, it's the population, and there is a growing developing area in that county near Dickinson, Santa Fe, all those areas. And so to focus on whether there's water misses the point, the point is whether there's a customer base, and they're free to sell wherever they like, including that area.

Second, he rattled off a number of percentages of ATVs and MULE sales that are in those areas that are closer or more convenient to UV Country's proposed location. The inquiry is harm to Mainland's business, not harm to MULEs and ATVs, and so when you take those percentages and apply them to the fact that the only 13 percent of Mainland Cycle Center's business is MULEs and only 25 percent is ATVs, the actual number comes out to be about 15 or 16 percent of their sales that are just closer.

MR. VANDERGRIFF: Are you making the argument --

I'm not sure I understand this. This protest is about MULEs and ATVs and the percentages and numbers are about MULEs and ATVs, and yet you're trying to make it into something larger than that. I'm confused. The inquiry is not as to harm to -- my understanding of the inquiry is to harm to business, it means the business that we're talking about is the ATVs and MULEs.

MR. STEWART: I understand. The cases talk about the overriding consideration is the public interest and what is the impact --

MR. VANDERGRIFF: I don't dispute that, I'm just talking about the point you just made.

MR. STEWART: And so what is the impact on Mainland's business and really is it going to harm them to the extent that they're going to go out of business and leave the public with one fewer option, and I don't think that any of the evidence presented shows that.

Secondly, even if you accept that 30 or 40 percent of their MULEs or ATVs would be lost because it would be closer, there have been a number of SOAH decisions where testimony that 40 percent of the sales are closer to the applicant is insufficient to say that they're going to lose all of those sales. And that's why we need to look at what the reality is, UV Country has operated close to other Kawasaki full-line dealers, they've not harmed those dealers

because they focus on utility vehicles and not the full line of Kawasaki products.

And so those decisions have said that where the impact is in this small percentage or where the only testimony is that they're just going to be closer so that means we must lose them, that's insufficient. And so to apply that set of rules to those cases and to apply a different set of rules here is a misapplication of the law.

And so for that reason it's important just to look at what the impact will be really on Mainland's business. Was there evidence of this or was it just well, they're going to be closer so that means we're going to lose everything. Mainland is free to do that.

And really, by having a more visible location in Alvin where there is a huge gap on the map, this will increase Kawasaki brand awareness, it will increase it for all Kawasaki dealers, people will become more aware of Kawasaki products, and so that also has to be taken into consideration.

MS. RYAN: Can I ask a question?

MR. VANDERGRIFF: Sure, please.

MS. RYAN: One of the factors was that denying this application will harm UV. It's this location that's been denied, nobody says they can't move period, so relocation -- I understand that they're out of room --

relocation is not out of the question, it's just to this particular spot. Was it understood prior to or research done with regard to the protest rights?

MR. STEWART: There was, and like I said, UV

Country was aware that Goe Kawasaki was located in Brazoria

County. Because it's so close, as the crow flies, UV

Country was not aware that it was within the 15 miles of

Mainland Cycle Center, and so this location, it's in the

record that UV Country also previously owned property on

Beltway 8 in Pearland which was insufficient to meet their

growing needs of their business, and so that was a part of

the deal that was discussed at the hearing.

MR. VANDERGRIFF: You also took advantage of an opportunity, there was a facility that was available too.

MR. STEWART: Well, it's essentially my answer is it's the only practical option for UV Country at this point in terms of a location that meets its needs, that's available and that it can do its business where it is, and it's 14.3 miles as the crow flies.

MR. VANDERGRIFF: So is it fair to say that if that dealership had been .7 miles just a little bit up then there wouldn't be a protest?

MR. STEWART: There wouldn't be a protest, there wouldn't be a right, and so we don't think that that .7 miles makes a huge difference, especially considering the

difference in the business focus of UV Country and Mainland and what they do and what they are.

And so to answer your question, really UV Country could relocate somewhere else, but given the circumstances, this was the only practical option and it's within .7 miles.

MR. WALKER: Mr. Bray, I have a question for you. If a dealer outgrows his location -- which looking at the pictures, and I know where these people are located, I've been in that area of Houston -- if they've outgrown that facility, if they were to go across the street or down the road, would they have to go through the same process that they're going through today, or how does that work?

MR. BRAY: In the old days the answer would have been yes. In current times you have to move closer to a protestant and you also have to move more than a mile, or is it two miles now? The statute has changed, it's two miles now. This move is beyond those parameters.

MR. WALKER: So if you did move within a two-mile radius, nobody has a right to complain about your move.

Now let me ask you this other question. If the applicant here were to maintain Hogue Street as residence primary location -- because it sounds to me like what they do, anyway, is 80 percent of their work is in modifications of these units to make them for the military -- if they were to have a facility next door to LaMarque's location over

here, Mainland's, just doing customizing but still had their sales facility at Hogue Street, is that acceptable to the state or not?

MR. BRAY: That's a very difficult question the way you've framed it, but if there are dealership activities that are addressed by the code that would be going on at that LaMarque facility you mentioned, that would be a problem for the state.

MR. STEWART: Could I just address one thing on your question?

MR. WALKER: Yes, you can.

MR. STEWART: IN the record was the testimony that the Hogue Street location and the Pearland property that UV Country owned were being exchanged for the Alvin location. That transaction had not closed as of the time the record closed, but the testimony was that Hogue Street would no longer be an option because it was being exchanged for the Alvin property along with the Pearland. And I can't refer to what's happened since then, but I can tell you that that was in the record, and so from our perspective, Hogue Street will not be an option.

MR. WALKER: For my information, that was just a what-if.

MR. BRAY: And to try to be a little more complete, I'm not saying that dealerships cannot have

offsite facilities, they do. Sometimes your body shops or your make-ready, some of your facilities are not necessarily connected to your dealership. But the primary customer-facing pieces of your dealership are the licensed parts --well, I can't really say that -- customer-facing, including service, are the licensed parts that fall within these statutes that talk about market areas.

MR. GILLMAN: To make it simple, if I put a satellite location out there and I'm doing customer-paid labor, that's all well and good. If all of a sudden I start doing warranty labor and stuff like that, performing franchised dealer activities in that location, then you've got to be licensed. Is that pretty simple?

MR. BRAY: If you hadn't used the word satellite, I'd totally agree with you.

MR. GILLMAN: Well, you got what I meant.

MR. MASON: May I clarify?

MR. VANDERGRIFF: Please.

MR. MASON: Just for the record, at the hearing, as Mr. Stewart mentioned, the property in Alvin the sale had not been closed on the Alvin property. During the discovery phase of this matter, which was allowed, the applicant objected to any and all inquiries into the purchase of the Alvin property, including earnest money, things of that nature, and the location, anything dealing with the closing

was objected to. And so a motion to strike was filed and that was granted. It was stricken from the record any reference to how much they paid for the property and things of that nature. What was presented was evidence of the Beltway 8 property that they owned and previously advertised as the future home of UV Country. That was presented.

And the reason why I didn't go into details about the alleged harm to UV Country was because the administrative law judge felt that the totality of the circumstances favored the fact that they would be harmed. But we did present convenience versus necessity, and the point was that yes, it may be more convenient to move into an existing location but if that convenience is going to be detrimental to the protesting dealer is the issue that we tried to make at the hearing. I just wanted to clarify that for the record.

MR. STEWART: If I could just make one quick statement. We objected to disclosing the purchase price or earnest money amounts as being irrelevant. We did not object to discussion about the closing of the transaction or anything of that nature.

MR. VANDERGRIFF: I think that was evident from the record. So thank you.

Any questions?

MR. INGRAM: I have a question for Mr. Bray,

since I'm the new guy.

Reading on the board authority, there's three different Occupation Codes -- well, there's actually two Occupation Codes and a Government Code. I'm trying to establish what is our authority under this case, what are the guidelines, if you will? That may be too broad. I'm sorry.

MR. BRAY: Well, the code provision in question is about whether or not this applicant can establish good cause to take that dealership and move it south. The authority is to decide whether or not they can do that, whether or not to grant the application or deny the application, and it's based on good cause.

But to be more complete in answering your question, your authority nowadays is limited because of the fact that cases are heard by SOAH ALJs and that limits you in what you can do with their findings and conclusions.

MR. VANDERGRIFF: And you have three things. Do you want to repeat those three?

MR. INGRAM: Actually, I have them in front of me, so I've got it.

And so the point being is that a lot of the testimony today has already been admitted during the hearing with the ALJ.

MR. BRAY: The evidence has been taken, sworn

testimony and subject to cross-examination, and you as a board are not in a position to be retrying the case or trying any part of the case because that's been done. Your part is to decide the case, and editorially, I will say unfortunately you are restricted in how you can decide the case because of the Government Code.

MR. INGRAM: Gotcha. Thank you.

MR. BRAY: Truly, the issue, I think, before you is just trying to determine if any of those three factors can apply in a way that give you flexibility to work with the decision.

MR. VANDERGRIFF: And we are hearing probably some things that would be considered facts tried at the ALJ phase. At the same time, I think it probably helps enlighten to hear some of these things with the three areas that we're concerned with.

MR. INGRAM: Thank you.

MS. JOHNSON: If I can ask a question.

MR. VANDERGRIFF: Sure.

MS. JOHNSON: It's obvious when you read this that this ALJ made many technical errors, and I don't understand how that can happen, number one. I'm not sure I'd want this ALJ making a decision for this agency again, because these were serious technical errors. This whole document was just a mess, and thank you for making sure it

was all cleaned up.

So those technical errors, in order to change this ruling, we would have to address each of those technical errors?

MR. BRAY: Yes, and I'm hoping that Ms. Cost is coming to a microphone. Let me say a couple of things.

One, this particular ALJ, I'm familiar with her work over a long course of history, she's one of the better ones at SOAH, in my opinion, so if you're disenchanted with this, I really feel bad for the situation.

Secondly, your thanks goes to Ms. Cost and her staff attorney for addressing the technical errors because the General Counsel's Office did not do that.

And I'm a little concerned because you possibly have two staff attorneys before you that might not entirely agree on this. In my view, usually when it says correcting technical errors they don't mean overturning a SOAH decision because of that, they mean cleaning up problems or work that's not to your satisfaction. However, as the way you described it when there are just a myriad of technical errors, in my mind you have to wonder if you haven't reached a point where the whole product is in question.

MS. JOHNSON: And I do feel that way.

MR. WALKER: There's a huge amount of errors in this whole deal.

MS. JOHNSON: So would an appropriate motion in 1 that case be to send it back to the ALJ, or can we overturn 2 the ALJ's ruling? 3 I'd really encourage you to seek Ms. 4 MR. BRAY: Cost's view before I even answer that. 5 6 MR. STEWART: I have a proposed order that we 7 believe addresses that. MR. VANDERGRIFF: We'll get to that in a minute. 8 9 Let's ask the question of Ms. Cost. 10 MS. COST: Sure. The proposed final order that 11 you have in your packet that my staff and I prepared, there are two of the three reasons why we believe some findings of 12 fact and conclusions of law either needed to be changed or 13 added, and there are a couple that are because of technical 14 error, and under the statute, only a finding of fact can be 15 16 changed because of technical error. 17 And the first was basically the ALJ just 18 apparently did not understand what kind of application she 19 had in front of her. She thought it was an amendment, it's 20 actually a new application. 21 MR. WALKER: How do you not understand that when 22 that's your job? 23 MS. JOHNSON: Especially an experienced judge. MR. VANDERGRIFF: That's an editorial for a later 24 25 time.

MR. GILLMAN: And regardless of whether it's right or wrong, that's the way it is.

MR. WALKER: You don't understand the case in front of you?

MR. INGRAM: That may be a little strong.

MR. VANDERGRIFF: Okay.

MS. COST: And then the other technical error is we did have originally two protestants. When we got this PFD we actually had to go back to SOAH and find out what happened to the other protestant, and so we just wanted to make sure that there was something in the order that reflected that Goe Kawasaki dismissed their protest before we went to hearing, so that was cleaned up.

I may be missing another one but I think the rest of the changes that we have recommended are misapplication of the law because the ALJ seems to discuss -- I don't know if I can go so far as to say rely on, but certainly discuss personal watercraft, which this board has no jurisdiction over, and the motorcycles which that's not part of this application. And like I said earlier, if UV Country were to want to sell motorcycles in the future, they would have to file an application and they would have to go through this protest process all over again.

MR. VANDERGRIFF: Can I ask a question?

MS. COST: Certainly.

1	MR. VANDERGRIFF: Does the fact that they
2	possibly could have I mean, I understand it's going to be
3	stricken from the record if we follow your recommendation
4	and I understand they did a revised proposed final decision,
5	so I understand all that, but the fact remains that it was
6	in the mindset when the decision was made, but that's not
7	something we can do? If we made a determination that we
8	felt like that that unduly prejudiced the hearing, is that
9	something we can consider?
10	MS. COST: Certainly. The board always has the
11	option to remand a case back to the ALJ with some
12	instructions that say you got this stuff wrong, you need to
13	go consider it in this light.
14	MR. VANDERGRIFF: So whether than outright
15	reverse it, we'd be well advised to remand it.
16	MS. COST: You would basically enter an interim
17	order remanding the case back to the ALJ.
18	MR. VANDERGRIFF: Rather than reversing it.
19	MS. COST: Correct.
20	MR. VANDERGRIFF: Mr. Gillman.
21	MR. GILLMAN: I'd like to address this to Mr.
22	Bray. If a board member wanted to propose, in effect, that
23	we rule in favor of the applicant, how would that motion be
24	worded to avoid pitfalls later on?

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MR. VANDERGRIFF: I'm going to answer it and say

you have to be specific as to one of these three criteria here and give specific facts for that.

MR. GILLMAN: What do you say about it?

MR. BRAY: He's correct, and I'd like to speak to that a little bit more, but before I do, let me just, if I may, speak on this remand idea.

I think you have to be pretty specific on that as well, because remember I mentioned a minute ago you have dueling lawyers, I don't share the view that an ALJ examining other makes or other business that a dealership has as being irrelevant. I know the staff makes that statement in here. So if you share that view, you should tell the ALJ that specifically because I wouldn't get that from the statute, I wouldn't get that from prior precedent.

And more to your question, the chairman is exactly right, we do need to be very specific about why and on what basis you're wanting to rule differently than the ALJ recommends. And toward that end, typically parties who want you to rule their way try to provide, like this gentleman is trying to do.

MR. VANDERGRIFF: This is common.

MR. BRAY: And then it's on him. If you elect to go with him and you use his proposed findings and conclusions and your decision goes up on appeal and the board is overturned, it's his fault.

That's called passing the buck.

I suspicion he's ready to take

that. 3 Well, Molly, there's another issue 4 MR. WALKER: here too because the application was also to open up a Club 5 6 Car dealership at the same location. Correct? 7 MS. COST: Right. MR. STEWART: Not this application. 8 They've been 9 licensed for Club Car at that location through a separate 10 application. 11 MR. WALKER: So they already have another application that has been granted to sell Club Car at that 12 location. 13 MS. COST: If I could, the licensing record shows 14 that this initial application was to move the Mule, to add 15 16 the ATV and to add the Club Car. Club Car was not subject 17 to protest. I don't believe we even sent protest letters on 18 it and I don't believe there's anybody in the protest area, 19 and subsequent to this proceeding that portion of the 20 application has been approved for Club Car at the new 21 location. They're saying the same thing: 22 MR. BRAY: one application but they don't hold up lines that aren't 23 24 subject to protest. 25 MS. COST: Right. If an applicant wants us to go

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MS. JOHNSON:

MR. GILLMAN:

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ahead and approve a line that's not subject to protest, we do that.

And if I could, just one point, I actually don't think Mr. Bray and I are in disagreement about the other line relevance issue. What I was concerned about in this PFD is that the ALJ seemed to think that the fact that -- what I got out of it was that she thought that if UV Country's application were approved and they wanted to start selling motorcycles, they just could, that she didn't seem to understand that they actually had to go through a protest process, not that Mainland's entire business, including sales of other products weren't necessarily relevant.

MR. BRAY: Then we're not in disagreement, but that makes me even give more credence to Member Johnson's comments that this is a sadly put together product.

MS. JOHNSON: So is it not appropriate for us to take action that we could send it back on the basis that the ALJ's analysis included consideration of matters that were not relevant which resulted in an unfair prejudice against this applicant?

MS. COST: The board could certainly do that.

MS. JOHNSON: I would so move.

MR. WALKER: Hold it.

MR. VANDERGRIFF: You made a motion, you can't take that back.

MS. JOHNSON: Okay, if nobody seconds it. 1 MR. VANDERGRIFF: Mr. Walker, did you have a 2 question? 3 MR. WALKER: Yes. If we send this back to SOAH 4 based on Ms. Johnson's recommendation -- which I'd probably 5 6 second that in just a minute -- what is the time frame to 7 clean this mess up? 8 MR. BRAY: SOAH is under statutory provisions 9 that require them to do things in a certain amount of time 10 but there are procedures to relax those. There's no real 11 time frame that you can ask, but I think internally they are under some pressure to resolve matters and get them out the 12 door. So if your question is about does this get lost in a 13 black hole somewhere, I think we'd be comfortable saying 14 that's not true. Now, if they'll actually do what you ask 15 16 them, that's another story and we can't guarantee that. 17 MR. INGRAM: I have a followup question for Ms. 18 Cost. One of the seven factors is that any harm to the protesting franchise dealer, and it seems pretty clear that 19 20 the ALJ was considering the watercraft and those items, so 21 is it fair to say that she would not have an accurate assessment of whether it would or would not harm the 22 business? 23 24 MS. COST: I think that's fair to say, yes. 25 MR. VANDERGRIFF: I also, by the way, want to

note we do have one other speaker today that might be beneficial to us to hear, and that is Larry Buehler, who is the economic development director in the City of Alvin, and then we have Garry Barry who is the district sales manager for Kawasaki, who is here. He is on it, he's not registered to speak. He could certainly be available for questions, I think, if he chose to do that.

But the question I have for you, again remanding the case, do you think it is within the power, based on what we have if there is a firm belief that on this particular part the harm with Mainland with respect to maybe too much consideration for items not before it, is that something that we can actually reverse them or do we need to remand it?

MS. COST: You certainly could reverse it. You basically could take out the information with regard to the watercraft and the motorcycles.

MR. VANDERGRIFF: I mean reverse the decision because of misapplication of the law prejudiced the decision.

MS. COST: Yes. If you felt like the ALJ did not follow the law because she considered products that weren't relevant to the proceeding, you could reverse on that particular -- I mean, I think you'd have to look at what was left, look at the percentages that were left of what harm

might be, and then would have to make a decision as to whether or not you felt that was significant enough harm. It might result in a reversal, it might not, depending on your analysis of the numbers.

MR. INGRAM: When you consider the fact that it says any harm, so I mean, that would imply to the general business itself, not necessarily to a product line. It sounds like it's just like harm to that business. So when she made this decision, she was relying on their entire product line, so the fact that she was looking at all product lines, so I'm kind of confused now because if we send it back and say you can't look at those product lines, well, in fact, it seems like actually part of the entire structure of that business is all product lines.

MR. BRAY: And that's where I was suggesting there possibly is a disagreement. There may not be. In my experience, if Mr. Gillman has a very large line and a very small line at one dealership, one is the real moneymaker and the other one is a lesser one, and the a lesser line application moves closer to him, I believe ALJs have the right to be thinking about relative harm to Mr. Gillman by this lesser line, the ant, affecting his whole dealership.

MS. COST: I think what the ALJ did was if UV Country had been located in Alvin, it looked at the sales that Mainland made not just of ATVs and UTVs but also of

1	motorcycles and the RUV vehicle, and the ALJ said there's
2	harm because if they'd been there they could have also been
3	selling motorcycles and RUVs which is not part of the
4	application. I completely agree that they can look at the
5	totality of the business and say 95 percent of the business
6	is not these lines, there's not going to be a lot of harm,
7	or 95 percent of the business is and I'm just pulling
8	these numbers out of the air is going to be affected and
9	so there's much more harm.
10	I don't know if that made anything clearer.
11	MR. WALKER: Can we listen to Kawasaki for five
12	minutes maybe?
13	MR. VANDERGRIFF: Absolutely. That's what I
14	said, I think we need to listen to them.
15	MR. WALKER: Let's listen to what Kawasaki has to
16	say.
17	MR. VANDERGRIFF: Let's clear a little space at
18	the table, and you can certainly come back. Actually we
19	have the speaker first. I'd like to hear from Mr. Crow from
20	Alvin, and Mr. Barry has only said he's here for it, so he

MR. VANDERGRIFF: Are you Mr. Barry? Yes, you're

I signed every document, every form, everything to speak.

may not be here to testify.

Did I make a mistake?

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MR. BARRY: (Speaking from audience.) I thought

here on it so you're welcome to speak. I'm sorry, I didn't articulate that well. You're not necessarily for or against it, I wanted to identify to the board, you're on the point.

But Mr. Crow is here for Mainland Cycle Center.

MR. WALKER: Mr. Crow is here.

MR. VANDERGRIFF: I messed that up. I'll come back to it. Mr. Barry from Kawasaki.

MR. BARRY: Let me make an introduction. I'm

Garry Barry, I work for Kawasaki Motors, I've been doing

this for 25 years. I've had the Houston area and half of

Texas and half of New Mexico for most of that 25 years.

We've made a couple of minor readjustments geographically,

but the major body is half of Texas.

I started in 1985, I had 19 dealers; I currently have 45. Out of the 45 dealers I currently have, two dealers were with me when I started, one dealer is at the same location with different ownership. So I have seen just about everything there is with dealer relocations, remodels, new dealers, I've been in two or three different protests, et cetera, et cetera.

My district is the largest district in the nation for Kawasaki with ATV sales, wholesale and retail; it's the largest district in the nation for Kawasaki for utility vehicle sales, wholesale and retail; it's the largest district for Kawasaki overall, wholesale and retail.

I tell you this because hopefully my qualifications may say a little bit for experience here, and some of these things we get caught up in details and don't look at the big picture.

The number one thing and number one purpose that I use as a guideline for new dealers and relocation is positive business. It's real simple. My goal is not to take from one and give to the other. This dealer over here is one of the best dealers in the nation; I wish I had 45. This dealer is one of the best dealers in the nation; I wish I had 45. These are facts, this is truth, these are not hypothetical numbers, these are magic formulas, this is not theory in a boardroom somewhere, this is what they do. They fight it out every day and they create positive business for Kawasaki.

So when these protests, when these relocations, when all these remodels, whatever goes on, I'm the guy that lives with the results. I live with those results sometimes for a decade or more, so I've seen what happens, I'm a witness.

MR. VANDERGRIFF: If I could interrupt you just to ask this question. Kawasaki approved this relocation.

Correct?

MR. BARRY: Yes, sir.

MR. VANDERGRIFF: Is it safe to assume from that

approval of that relocation that you believed that the market warranted the franchise being in that location?

MR. BARRY: Yes.

MR. VANDERGRIFF: And is it safe to also assume that you did not see any harm that was going to happen to Mainland's business or a substantial harm?

MR. BARRY: Yes. And I want to address that particularly.

I've been involved in several of these. When I put in new dealers, a new dealer -- let me back up one second. Every applicant that wants to be a dealer, they're never too close; every dealer that's an established dealer, everyone is too close. So we have these two large factions, so my job is I go in and I get the puzzle and I make the puzzle work, hopefully.

When I put in a new dealer, most of the time -let me take that back -- all of the time both dealers
benefit. When I have a dealer that relocates, upgrades his
business, all dealers benefit. When I have a dealer that
remodels, all dealers benefit. When there's a dealer that
comes into a market that's a slow market and he's a dominant
dealer, he comes in and he advertises, he advertises the
brand, et cetera, all dealers benefit. All dealers would
not want it to happen but they do benefit.

Because see, I'm the guy that walks into the

have come into their advertisements, with their enthusiasm 3 that somebody else across town created that they made the 4 So all people benefit. 5 sale. 6 I tell you the truth when I say this: more brand 7 awareness creates more customers; more customers create more 8 competition; more competition creates better operators and 9 more efficient dealers; more efficient and better operated 10 dealerships are more successful. It's a win-win-win for 11 everybody. I do not believe, from the bottom of my heart, 12 that this will cause harm to Mainland Cycles. I actually 13 believe that it will improve their business. 14 MR. VANDERGRIFF: Do any of the board members 15 16 have any questions? 17 MS. RYAN: I do have a questions. Was Kawasaki 18 aware of the protestable 15-mile limits when it approved the 19 relocation? 20 MR. BARRY: Yes. I now the law like the back of 21 my hand. 22 MR. INGRAM: Is it also safe to say then that you 23 were aware of the exact location that they wished to 24 relocate to? I was aware of the exact location. 25 MR. BARRY: Ι

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dealership and I've seen their sales drawers where they have

advertisements of these dominant dealers where customers

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went and looked at that location. Now, what we did have is 1 we have a very close line, 15 versus 14.36. What corner are 2 you going to measure? 3 So it still comes back to the heart of the people 4 that make it happen because there's no magic formulas 5 6 because if that was the case, then everybody would put it 7 just right here or just right here. It's the guys that go 8 out and make it happen day to day and they advertise, they 9 promote and they create business. 10 MR. VANDERGRIFF: Any other questions? MS. JOHNSON: One more. I read somewhere in here 11 that Kawasaki has a philosophy that it will not allow 12 dealers to be within five miles of each other, I believe. 13 MR. BARRY: I don't think that's a philosophy. 14 think what you're reading and may be referencing to is we 15 16 consider in our sales and service agreements that's their 17 primary responsibility.

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MS. JOHNSON: Okay. The primary responsibility, not necessarily their marketing area. So you would allow two dealers to be side by side.

MR. BARRY: If the state law would allow and both wanted to agree to it. At one time we had them five mile and eight miles apart and everybody got along and everybody did fine.

> MR. INGRAM: I have one more question. During

the hearing with the ALJ, did you also testify?

MR. BARRY: No.

MR. VANDERGRIFF: Any further questions?

MS. JOHNSON: I withdraw my motion.

MR. VANDERGRIFF: Okay. We now have no motion on the floor but we do still have one speaker, and I apologize, I picked up the wrong card inadvertently. After saying we had the economic development director of Alvin, I did not recognize him, but he's coming in, Larry Buehler. Would you please state your name for the record?

MR. BUEHLER: My name is Larry Buehler. I'm the economic development director for the City of Alvin; I've been there five years. I did six years economic development vice president for business development in Brazoria County prior to that, so I'm very familiar with my region.

It's not often that I'm here and speak in maybe a negative light of my city, but I do want to paint you a picture based on what I've heard today. We talk about market share. In the economic development world, we look at our competitors. We all compete to bring things to the State of Texas, but at the end of the day, I want it in my city versus someone wanting it in theirs.

An example that I'll use of what's happened in Alvin -- yes, we are modestly growing -- is Office Depot. They built a building, they put the paint on it, you knew

exactly what it was, 2-1/2 years later we finally opened the doors. It's been a difficult growth period for our city.

During that same time, many of you are familiar with the I-45 corridor, specifically the 646 area, the UTMB new medical center and all the big box stores and all of the explosive growth on that corridor. I'm going to compete with them one day but I want you to know that there's a distinctive difference between that corridor and that area in the City of Alvin.

Now, having said that, on behalf of my mayor and my city council, I'm a board member of the chamber, we're very pleased that this quality development, this project has chosen our community. On our board of directors also is a gentleman by the name of Doyle Swindell. He's affiliated with Ron Carter auto dealerships. They're very excited about this product coming in and co-locating right across the highway on FM 528.

With that, I'll reserve any other comments and answer any other questions that you may have, but I wanted you to understand fully the community difference between where we're at and that corridor where their primary business is located.

MR. VANDERGRIFF: Any questions of Mr. Buehler.

(No response.)

MR. VANDERGRIFF: Mr. Bray looks like he's ready.

Oh, I'm sorry. Mr. Gillman.

MR. GILLMAN: I'm kind of blunt here, I would like to propose that we approve and grant for these people to go into Alvin, Texas. Now, I'm not a lawyer, but I would appreciate any help that Mr. Bray would have to where I could word that where I don't purposely set us up for major problems.

MR. BRAY: And if I may speak to it for a minute and then ask for some help.

First of all, just so it's very clear to all of you -- and I don't think there's any misconception -- my job and the ladies in the back of the room and General Counsel's Office job is to protect, defend and support this board, so whatever decision you want to make, we'll figure out how to do it. We try to help you make a legally defensible decision. And toward that end, given Member Gillman's sentiment and sort of the vibes I'm getting from some of you, I'd offer the following. So I'm not doing so, I don't have any particular care which way you go, but let me offer the following.

It would be a little easier, in my mind, had the ALJ not made the conclusion that she made because the findings go both ways and could support either conclusion, in my mind. Unfortunately, she made the conclusion as well and that makes it a little tougher because the .058(e)

constraints are both on conclusions and findings, by and large.

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But in looking through them, and this is where probably I'll want some help -- maybe Ms. Cost will help me or hurt me in a minute -- but when it talks about in ALJ proposed finding 29 that UV Country's relocation will harm Mainland, if the ALJ misapplied the law in terms of how she looked at other lines, if Ms. Cost can see it that way, then that would be a basis for you to overturn that finding. addition, the staff has proposed a whole bunch of findings that the ALJ did not make but that were included within her discussion, and you can argue that either way. You can arque that discussion ought to be considered part of the ALJ's decision-making process, et cetera, but I would arque with you that .058 says change findings and conclusions, it doesn't say change discussion. And so if she has misapplied the law by not including a finding even relating to current and reasonably foreseeable projection of economic conditions, and the staff has to provide one, that's a misapplication of the law.

And I'm stringing this a little bit again, but given those two misapplications of law to support Member Gillman's direction, I think that's enough to overturn the conclusion that the protest should be granted and the application should be denied which would give you some

grounds to go the other way than is recommended by the ALJ. 1 And I really like, like I say, for you to have 2 the benefit of Ms. Cost, who is more versed in this and has 3 studied it more. Those are my two cents on how to do this 4 and support your decision if you choose to go that way. 5 6 MR. WALKER: So does Mr. Gillman have a proposal 7 on the table here? Did you make a motion? MR. GILLMAN: I'd like to make a motion that we 8 9 overturn. 10 MR. WALKER: And I will second your motion to 11 overrule. I think that there is a tremendous amount of technical errors and poor decision processes at the SOAH 12 judge's level, and I think that this board, with nine people 13 14 on this board here, part of the job we were given when we were put here was to make some decisions at the public 15 16 interest to look at how do we represent the dealers and 17 represent the public out there. 18 And so I'd like to second your motion that we 19 take and overrule the decision of the SOAH and the 20 recommendation of the staff and that we grant the 21 application of the UV dealership. MR. GILLMAN: You're seconded my motion? 22 23 MR. WALKER: I'm seconding that motion. 24 MR. GILLMAN: Thank you. 25 Based on previous discussions, we MR. INGRAM:

would need to amend that motion stating the specific factors 1 2 that we would like to disagree with. MS. RYAN: I'd like to hear Ms. Cost just so I 3 understand. 4 MS. COST: Actually, that was what I was going to 5 6 ask. You technically, I suppose, could take the findings as 7 they are and just reverse the conclusion, you came to a 8 different conclusion based on the same findings. However, 9 if you think there are findings that need to be changed 10 because the ALJ misapplied the law by looking at some of 11 these other things, then we could also look at the findings. For instance, the ALJ said in finding of fact 29 12 that the relocation to Alvin would harm Mainland. If you 13 disagree with that, we would want to change that and you 14 15 would need to tell me why. 16 MR. VANDERGRIFF: Is it appropriate for this body 17 to have made the general motion and to flesh out those 18 findings as they would on a piece of paper and provide it to the parties here in a few days? Is that appropriate, can we 19 take that action? 20 21 Sitting here today and trying to re-craft those 22 specific findings is probably a little difficult for this 23 group, this body. 24 Well, can we take the motion? MR. GILLMAN:

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MR. VANDERGRIFF: I'm not saying not consider the

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1	motion.
2	MR. GILLMAN: And then let them finish.
3	MS. JOHNSON: But may I ask too, Molly,
4	because
5	MR. VANDERGRIFF: Let me ask a question first.
6	MS. JOHNSON: I'm sorry.
7	MR. BRAY: Really, I think the best approach
8	would be to give us clear direction, let us go back and
9	prepare something for you, and as much as everybody doesn't
10	like delay, let us bring a cogent, well thought-out product
11	back to you at the next board meeting.
12	MR. VANDERGRIFF: That was my point, that's what
13	I was asking for.
14	MR. JOHNSON: It would not be okay saying that
15	motion and in addition amending the findings of fact 1,
16	
	4(a) you've laid these all out for us 11, 30, 42 to
17	4(a) you've laid these all out for us 11, 30, 42 to 50, and the conclusions of law number 1, 3, 5 and 5, as
17 18	
	50, and the conclusions of law number 1, 3, 5 and 5, as
18	50, and the conclusions of law number 1, 3, 5 and 5, as presented?
18 19	50, and the conclusions of law number 1, 3, 5 and 5, as presented?  MR. BRAY: That's another option.
18 19 20	50, and the conclusions of law number 1, 3, 5 and 5, as presented?  MR. BRAY: That's another option.  MS. JOHNSON: And that would get us out of here
18 19 20 21	50, and the conclusions of law number 1, 3, 5 and 5, as presented?  MR. BRAY: That's another option.  MS. JOHNSON: And that would get us out of here and done with this today.

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(General talking.)

MR. VANDERGRIFF: Can we have one person talk at 1 a time? It's difficult for the record. 2 MS. JOHNSON: So that wouldn't be the solution, 3 that's not a solution, because some of those findings were 4 5 just mistakes. 6 MS. COST: That's correct. What we were doing 7 was correcting the technical errors, fixing some of the 8 misapplications of law, but not changing the underlying decision of the ALJ. I think it would be smart for the 9 10 board to go farther than that if they wanted to reverse. 11 MS. JOHNSON: Thank you. MR. VANDERGRIFF: Mr. Gillman. 12 13 MR. GILLMAN: By delaying this another 30 days -is that what we're talking about? 14 15 MR. VANDERGRIFF: In effect, yes. 16 MR. GILLMAN: What economic impact is that going 17 to have on these people? 18 MR. BRAY: I don't know. I doubt that that's part of the record that I could refer to. You know, as a dealer, 19 20 that it has impact, but then again, they've been waiting 21 this long. I guess I could probably fairly comfortably say 22 that the people that came into this room on the losing end 23 of the ALJ's decision and are hearing you talking about 24 going with them probably don't mind waiting another 30 days

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if that's what's going to happen.

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1	MR. INGRAM: And I'll throw in my two cents.
2	Along with the chairman, I would prefer to have staff have a
3	thoroughly discussed and fleshed out order.
4	MR. BRAY: Whichever way you all choose to go, it
5	seems to me it would be good if you had an actual motion
6	directing us to prepare and bring you something supporting
7	going a particular way.
8	MR. VANDERGRIFF: Absolutely. I do understand
9	that.
10	MR. GILLMAN: Then how can I so move that they do
11	that?
12	MR. VANDERGRIFF: I think that you could
13	certainly reference the fact that and again, it's up to
14	the lawyers that we believe the ALJ has misapplied or
15	misinterpreted applicable law and has made technical errors
16	in findings of fact, so I think you could certainly make it
17	that way and the staff could then flesh those out relative
18	to the discussion they've heard today.
19	MS. RYAN: I'd second that.
20	MR. VANDERGRIFF: Mr. Gillman is shaking his
21	head.
22	MR. WALKER: But that doesn't tell me where we're
23	going with that.
24	MR. GILLMAN: We're trying to give them direction
25	to back up what we're fixing to do and give us very good

1	reasons and state it up front.
2	MR. WALKER: But I seconded a motion that I
3	thought was not sending it back to a SOAH judge but was
4	overturning.
5	MR. VANDERGRIFF: We are overturning.
6	MR. WALKER: Okay.
7	MR. VANDERGRIFF: We are overturning but we're
8	making sure that we have our findings of fact and
9	conclusions listed here.
10	MR. WALKER: So you're going to amend your motion
11	to send it back to our staff to
12	MR. VANDERGRIFF: No. His motion would still be
13	to overturn based on misapplication or misinterpretation of
14	applicable law and due to technical errors in the findings
15	of fact, and that would then kick it back. Staff will help
16	us flesh those out sot that we would formally approve the
17	details, if you will, at the next meeting.
18	MR. WALKER: Okay. I call for a vote, please.
19	MR. BRAY: And so for the record, this is an
20	interim order directing us to bring you a proposed final
21	order.
22	MR. WALKER: I call for a vote.
23	MR. BUTLER: You've got to second it first.
24	MR. WALKER: I've already seconded it.
25	MS. COST: I apologize for intervening here. I

just want to make sure -- because I probably need it for my 1 staff that do this -- I want to make sure I have clear 2 direction. Are we doing this based on changing any of the 3 findings in the proposal for decision, the findings that the 4 ALJ made with regard to desirability of competitive 5 6 marketplace, harm to Mainland, et cetera? 7 MR. VANDERGRIFF: Yes. Absolutely. MS. COST: Which one of those, because there are 8 seven factors, the ALJ found for the applicant on two. 9 10 MR. VANDERGRIFF: Again, I think it's really 11 appropriate for us to have some fleshing out here. certainly continue to have this discussion all day long, but 12 13 it's hard for us to put together findings of fact sitting in this body right here today on this dais. But for example, 14 on the harm to Mainland, it appears to me -- I don't know if 15 16 the rest of the people agree with this -- but it appears to

considered.

MR. BRAY: So you would be agreeable to a staff recommendation that that finding of fact go the other direction?

me that there was an undue reliance placed upon business

that was not before that SOAH judge and should not have been

MR. VANDERGRIFF: That's correct, yes.

MR. WALKER: Vote.

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MR. VANDERGRIFF: And I think the same would be

1	true on the first one you mentioned in terms of the
2	economic.
3	MR. GILLMAN: Mr. Walker called for a vote.
4	MR. VANDERGRIFF: Yes. I was going to see if
5	anybody else was trying to participate.
6	The question has been called. All those in favor
7	of the decision made at SOAH based on a misapplication or
8	misinterpretation of applicable agency law and a technical
9	error in the findings of fact, all of which will be duly
10	noted in the final proposal for final decision of this board
11	out of the interim order that is being directed to staff to
12	develop I kind of butchered the last part but hopefully
13	you got the meaning I'd ask you to raise your right hand
14	in support of the motion.
15	(A show of hands.)
16	MR. VANDERGRIFF: The motion carries unanimously
17	of those present. There are seven members present. Please
18	note that Victor Rodriguez and Marvin Rush were absent and
19	did not participate or hear any part of it.
20	I thank the parties for attending.
21	We're taking a couple of seconds as board members
22	are figuring out where they're going to be in the next few
23	minutes.
24	(Whereupon, a brief recess was taken.)
25	MR. VANDERGRIFF: If I could get order back in

1	the room, I'd appreciate it. I know I said a recess but it
2	was really just to make sure I could let one board member
3	leave. Mr. Walker is leaving the meeting, and Mr. Gillman
4	has to get his luggage.
5	MR. WALKER: You can stay.
6	MR. VANDERGRIFF: Once again we find the
7	considerably array of great talents that the executive
8	director has.
9	(General talking and laughter.)
10	MR. VANDERGRIFF: We now have three members
11	absent. Mr. Walker has left us so we've got six present.
12	We do not have, to my knowledge, any action items left. I'm
13	sorry, we do have one. Well, then I'm going to go ahead and
14	let you take up that item. I assume that's under the
15	Committee Reports.
16	MS. JOHNSON: Yes. Are we doing that now?
17	MR. VANDERGRIFF: Yes. Go ahead.
18	MS. JOHNSON: Do we need to wait for him?
19	MR. VANDERGRIFF: For Mr. Serna?
20	MS. JOHNSON: For Mr. Serna on the Committee
21	Reports.
22	MR. VANDERGRIFF: Never mind. We'll go the other
23	direction. I apologize to the audience.
24	We're on item 5.A, Administrative Reports.
25	Really the only major item to report at this point Mr.

Serna will cover some of the agency issues -- is the legislative. I do want to note to the group my continued admiration and appreciation of the efforts of the entire agency staff, but most notably our fine group of lawyers that work on this, and then our staff, Denise Pittard, Katharine Chambers and Jeremiah Kuntz. They have just done an excellent job for us throughout the session.

And with that, I would turn it to Mr. Kuntz, who is spearheading the effort over at the Capitol, to give us an update.

MR. KUNTZ: Jeremiah Kuntz, director of Government and Stakeholder Relations.

At this point in the session, obviously things are starting to move along pretty quickly. We've got two main bills that we're really focused on right now that are pretty critical for the agency, and that being the DMV Cleanup Bill and the Vehicle Titles and Registration bill that we've got that would allow us to do all of our automation system.

Right now the DMV Cleanup is progressing rather well. We've got it out of the committees on both the House and Senate. It is in the Calendars Committee right now waiting to go to the floor and it will set for intent at some point in time on the Senate. It just got voted out last night on the Senate side. So that one is progressing

rather well. We haven't seen any objection from stakeholders or from members of the legislature on that piece of legislation, so it looks like it's progressing rather well.

The other large piece of legislation that we have, which is 223 pages right now, was just voted out of the House. That's the VTR bill, it's the committee substitute to HB 2357. There were a lot of technical changes that we worked with Chairman Pickett on to try and get incorporated into the bill. We also worked with stakeholder groups, a lot of comments from the salvage industry, but we also worked with the independent auto dealers to try and work out any tweaks that they saw in the bill, and we helped in drafting those fixes to the bill and got it all worked out. So that one is progressing well, as well.

And it is pending right now in the Senate.

They've had a hearing on it. There was one amendment that was offered to the bill but because they left the bill pending, they pulled the amendment down, but that was a Wentworth amendment and he was rolling his SB 1057 into the bill, and that was a piece of legislation that would have required the removal of the vehicle registration sticker when you trade in a vehicle to a dealership, and basically what it would do is just say that the remaining registration

period would be lost on a resale of that vehicle. There were some issues with trying to calculate how to reattach the remainder of that registration of a vehicle that was traded in to a dealership. It looks like that will most likely get added on in the Senate when that comes back up. But other than that, we haven't seen any other major amendments coming at us yet.

MR. VANDERGRIFF: Any questions of Mr. Kuntz? (No response.)

MR. VANDERGRIFF: Thank you very much. Appreciate that effort.

The other thing I want to note is I will have these formally in writing and presented to you next board meeting, but our Finance and Audit Committee, I'm reconstituting that. Obviously we noted this at our last meeting that Jim Campbell is leaving, Cliff Butler will be the chair of that committee, and new members appointed to that committee that I'm appointing are Laura Ryan and Blake Ingram. So welcome to our world immediately, Mr. Ingram.

MR. INGRAM: Great. Thank you.

MR. VANDERGRIFF: On the Projects and Operations
Committee we do have Johnny Walker as our chair and Ramsay
Gillman is continuing as a member there, but I'm appointing
Vice Chair Cheryl Johnson to that group as well. And then
our Administrative Committee we have -- and at the moment

I've not conferred yet with the chair which is Laura Ryan -but we'll, I'm sure, add a couple of board members to that
going forward. Mr. Gillman is on that, as well, working
with her. So I just wanted to note that for the audience.

And with that, I'll turn it Vice Chair Johnson.

MS. JOHNSON: Okay. I'll do my best since this is the first meeting that I attended and there was a lot of information this morning.

The committee met today and went over al to of different projects that we're working on, and in particular the one that Mr. Walker has asked me to cover is the infrastructure and legacy application analysis project, ILAAP, and I don't know that anybody has this information but I can share it.

This initiative was documented in the transition report as something that needed to be done. The transition report identified a four-phase plan outlining the steps necessary for us to eliminate our dependency on TxDOT, and what this will, in essence -- and please, Mr. Serna, correct me if I'm wrong -- what this will do is identify exactly where we are today with regard to technology, and I do believe they're going to provide a bridge for the gap and what we would need to do in order to move forward so that we will clearly understand exactly what we need to do in the future. We know where we are today and what we may need to

do in the future, and this will be coordinated to occur along with the process and organizational analysis. All of these somewhat affect each other.

MR. SERNA: Yes, ma'am. And staff is requesting and received the green light from the committee to be able to bring onboard as necessary a few individuals with particular expertise that we may not have on staff, and we wanted to commit to the board for them to understand that we wouldn't expend any more money than we absolutely need to or have any contract staff onboard for any longer than we need to to assist us, for example, if we needed someone with database administration experience or telecommunications network experience, things like that.

MS. JOHNSON: So the recommendation that was passed unanimously by the committee is that the board direct the staff to conduct the ILAAP project with the total cost for this project not to exceed \$650,000 from the existing operating budget funding, and to complete the project on or before December 31, 2011.

MR. SERNA: Yes, ma'am.

MS. JOHNSON: Do you need that in the form of a motion?

MR. SERNA: No, ma'am. Staff clearly understands its instruction and we already have authority to expend those funds, but I wanted to make sure that the committee

and the board were aware that we're going to be moving forward with the project.

MR. VANDERGRIFF: Okay. And thank you very much, Vice Chair.

Mr. Serna.

MR. SERNA: I know it's been a long day so I just have a few things that I want to make sure that I update the board on in general. Linda Flores is here. We can talk about the financial update which we always do.

As she's coming up, let me just give you some very quick updates. Good news on another point of our separation from TxDOT, we have started processing our own payroll. And that is significant for us. It sounds like a little thing but it's a big thing for us.

MR. VANDERGRIFF: It is.

MR. SERNA: Ms. Flores continues to hire staff and we're staffing up our financial area and one of the significant accomplishments for us recently is that we are now processing our own payrolls. We developed our budget, we've been processing our own payments, we continue to move forward with weaning ourselves off of TxDOT for that support.

We're also trying to bring onboard the additional technical staff that we need so that we can begin to wean ourselves off of those aspects. We're fully self-supporting

when it comes to our purchasing department. And with facilities, for those facilities that we are responsible for, we're completely responsible for them now and don't rely on TxDOT for any of our non-TxDOT facility needs.

With that, the last thing I want to do is ask Ms. Flores to brief us on the financial statements.

MS. FLORES: Yes, sir.

If you'll turn back to the financial summary in your notebook, we are reporting for the month ending

February -- I'm sorry, for the record, my name is Linda

Flores, I'm the chief financial officer for the agency -
we're reporting financial information for the month ending

February 28, 2011.

\$7.6 million compared to \$7.8 million for the same month last year. In the month of February you will see a significant dip in our revenues. This is not unusual for the agency, we normally collect between \$60- and \$90 million a month, however, in February we do have a significant drop. The reason for that is the counties get to retain a large portion of the county road and bridge fee, and I have included that kind of information on page 3 of the financial summary.

On page 4 we provided a breakout, again, of the revenue collections for the state highway account, Fund 6,

and general revenue.

At last month's board meeting we had a question regarding the Think Street contract. We did go back and check with the vendor. They did provide a couple of outstanding invoices that were still in transit, so I've included that, it's \$56,000. They were still doing activities for us in the month of March, we'll be getting that bill this month, and we expect that bill not to exceed \$69,752.93.

Another question that was brought up last month were the utility charges that we were expecting to exceed. We did go back and identify those charges, and last year these charges were paid by TxDOT. They did not, as you know, continue that, so we are picking up those charges. I did move approximately \$3 million from other into that line item to cover us through the end of the year. That is something that we will have to take responsibility for in FY '12 and '13.

MR. SERNA: I wanted to clarify one thing -- and Linda, correct me if I'm wrong -- that was an expense that we had not anticipated. We had assumed that they would continue to pay that expense through the biennium which is why it spiked and we were unable to clearly explain that. We had to go back and do some detailed research. We have had discussions with TxDOT since then and clearly understand

that this is an expense that they just simply started charging us sooner and it's part of us kind of weaning off of them supporting us.

MS. FLORES: These charges are specifically for the RTS data lines.

On page 9 we have included the other detail and the footnotes are included on page 12 for the significant items.

And with that, I'll entertain any questions.

MR. INGRAM: I just had one. The RTS data lines, what kind of data lines, T-1s, do we know?

MR. SERNA: Yes, sir. We have various lines where we connect to every county in the State of Texas.

Most of the cases those lines are not dedicated exclusively to us. We ride on a backbone that's operated by TxDOT because they have offices in every county, and it makes sense, since the functions of the agency were once part of TxDOT, to continue to ride that same infrastructure. So in some cases they have multiple T-1s or what used to be called OC-3s -- I think they were called OC-3s -- but anyway, a bundle of T-1s, and when they get to a particular point then they split out and some go to their offices and then some of it goes to the counties. Based on the applications using those lines, we can come back and it can be determined how much of that cost was attributed to us and then where that

split occurs that's a dedicated line.

MS. JOHNSON: I'd just like to make a comment, I guess page 4, the registration revenue this year in February was above last year's, and March is fleet month so we can probably expect a big jump in the registration fees for March, and we'll see that probably in our next meeting.

MS. FLORES: Correct. And I can already tell you yes, March we did see come back up.

MS. JOHNSON: Excellent. Thank you.

MR. SERNA: The last two things that I have very quickly. I handed out to each board member just for your information a copy of a summary of county survey results. I'm going to go over that, I'll leave that to your reading pleasure, but I did want to point out that as part of our continued efforts to find out what our stakeholders and our customers are needing, especially our county tax assessor-collectors which are really our front line in working with the motorists and the fee-payers, we did survey them, we got back some really good responses. Ninety-one percent of the counties responded, so we were very pleased with that.

As you look at this document, a lot of the things that you'll see that they raised as issues, the comments in red are what we've done to already address those things. So for example, some of the counties had commented we'd like clearer information on your website. We've already changed

what we call their landing page so they have a dedicated place to go to to get information. They wanted clearer information from us and we've done that, and we continue to work on those things and you'll see that in the survey.

Then the very last thing I want to mention, and I don't know if I'll need to get Denise to help me with this, but just in case, I did want to give you an update on our request for appropriations. The House has completed its work on House Bill 1. The appropriations that are in House Bill 1 will not only allow the agency to move forward but continue to move up and meet the expectations that you have for us. That bill has made it through the house.

Senate Bill 1 which is the appropriations bill on the Senate side is still making its way through the Senate committee. The numbers in the Senate bill as well match the numbers in the House bill, so we feel very comfortable with our appropriations request and that if the bill passes the money that will be appropriated to the department will allow us to continue to move forward, including the funds for our major technology and improvement initiative.

So with that, I'll entertain any other questions you all might have.

MS. JOHNSON: I would like to go on the record, because I'm sure Mr. Cisco was very upset with me, but Galveston did not participate in the survey, we felt like my

1	voice was loud enough right here.
2	MR. SERNA: Yes, ma'am.
3	MS. JOHNSON: Don't misunderstand. It wasn't
4	that we didn't care.
5	MR. SERNA: Yes, ma'am. And staff understood
6	that because you have a unique role on the board that a lot
7	of times that's why you don't do that.
8	MR. VANDERGRIFF: Cheryl, I'm not sure if it's a
9	matter of law or of fact that we know you care.
10	(General laughter.)
11	MR. GILLMAN: I move that we adjourn.
12	MR. BUTLER: Second.
13	MS. JOHNSON: Do we have everything done?
14	MR. VANDERGRIFF: Well, we have a motion and a
15	second to adjourn. All those in favor please raise your
16	right hand.
17	(A show of hands.)
18	MR. VANDERGRIFF: No one is opposed. We're done.
19	(Whereupon, at 1:55 p.m., the meeting was
20	concluded.)

<u>CERTIFICATE</u>

MEETING OF: TxDMV Board

LOCATION: Austin, Texas

DATE: April 14, 2011

I do hereby certify that the foregoing pages, numbers 1 through 151, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Motor Vehicles.

 04/23/2011 (Transcriber) (Date)

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