Dear Transition Team for President-Elect Obama:

President-Elect Obama has made many important commitments relating to our nation's transportation system. He has pledged to use stimulus funds to both help our failing economy and our decaying infrastructure, making "strengthening our transportation systems … a top priority." He has also pledged to reform government to free the executive branch from special interest influence, and to address critical environmental issues.

The undersigned organizations represent hundreds of thousands of Texans with concerns regarding transportation, private property rights, the environment, agriculture and government accountability and transparency, and we offer our support to President-Elect Obama in meeting his commitments. This letter discusses our concerns about how the Texas Department of Transportation (TxDOT) proposes to use stimulus funds and offers several suggestions to address these concerns.

TxDOT's plans for stimulus spending would do too little to repair and maintain transportation infrastructure and put people back to work. As has occurred in many other states, the state DOT priorities for stimulus spending favor funding new highways over public transportation or repair of existing highways. This would exacerbate our oil dependence and worsen climate change, further erode communities, create fewer jobs, and miss the chance to build the new transportation infrastructure our country needs. Moreover, it appears to us that the TxDOT has requested stimulus funds to build substantial new road capacity using public private partnerships ("P3s") and toll financing. Many Texans oppose these new road projects because, as proposed, they would harm the environment and the public interest.

Some of the problems that have arisen with P3s were highlighted in recent letters from Congressmen James Oberstar, chair of the Committee on Transportation and Infrastructure, and Peter DeFazio, chairman of the Subcommittee on Highways and Transit, to the outgoing Federal Highway Administration Secretary (FHWA). The first letter, dated November 4, 2008, notes how the failure of sale-lease P3 deals that relied on credit-default swaps is now putting transit agencies in significant financial peril:

> *Recent moves by investors in transit financing deals entered into between 1988 and 2003 to extract payments and penalties from a number of public transit agencies are threatening to bring a number of the nation's transit systems to a halt. These actions by banks have now placed more than 30 of the nation's transit agencies at risk of default and financial collapse.*[1]

In a second letter,[2] dated December 15, 2008, the Congressmen raised serious concerns about a proposed rule from FHWA that would require government entities to charge "market-based" tolls, solely for the benefit of competition by private entities. As stated by the Congressmen, this would cause states to, "lose the flexibility to determine how best to address their surface transportation needs and protect the public interests," and, if implemented, the change would have a "major impact on

[1] http://transportation.house.gov/Media/File/press/11-04-08%20JLO-PAD%20Ltr%20PPP.pdf

[2] http://transportation.house.gov/Media/File/press/HT%20Oberstar-DeFazio%20Fair%20Market%20Value%20Letter.pdf

multi-billion dollar concession projects and could have a significant adverse material effect on state and local governments."

In many cases there are better ways to fund infrastructure than P3s. When P3s are chosen as a funding mechanism, there needs to be strict oversight of such arrangements to prevent similar problems or other potential negative impacts on our economy, environment, and government accountability. The Environmental Defense Fund, together with other environmental organizations, has developed a thoughtful set of principles on P3s related to infrastructure (Attachment B). EDF's proposals are a great start to curbing the excesses and problems associated with P3s. These approaches could be used to help better maintain and operate existing road infrastructure and public transportation in Texas, rather than building environmentally harmful projects like the Trans-Texas Corridor.

A shift in focus of the stimulus spending would also create more jobs and save energy. Analysis shows that both highway repairs and transit projects yield more jobs than new road construction. A 2004 study by the Surface Transportation Policy Project using a respected economic model found that highway repairs yield nine percent more jobs per dollar invested than new highway construction; public transportation projects yield 19 percent more jobs.[3] And a new analysis of just 29 rail and bus projects in 15 states shows they would yield almost 180,000 good jobs, not to mention the long-term economic development benefits for communities around rail and bus stops.[4] Public transportation investments increase business access to a larger labor pool and stimulate economic as well as social exchange. Real estate trends reveal that the land development marketplace craves transit-oriented development.

The controversial and widely opposed Trans-Texas Corridor has made P3s a high profile issue in Texas. The Corridor has engendered stiff opposition from all political parties. The proposed Trans-Texas Corridor would create a massive set of multi-modal transportation and utility corridors that at buildout would take up more than 3 times the amount of land of all of the current interstates in Texas – over ½ million acres. Although the Corridor was being implemented as primarily a state project, the Federal Highway Administration under President Bush has played an important – and negative – role in the controversy. And though some aspects of the grandiose TTC may not happen, the project is far from "dead", as allies of Governor Perry are claiming as we head into the 81st Legislative Session. As well, there is considerable fear that the state is planning to move forward with privatizing new major sections of the old Corridor path, labeling each with a different name, but still implementing a blight on rural Texas, rural air quality, and basic principles of open government. (For more on federal interference, please see the last section of Attachment A.)

We request the following from the new administration and Congress, and offer our support to help implement them:

1) A careful review of funds requested for Texas infrastructure in order to ensure that these projects are consistent with President-Elect Obama's stated intentions to provide, create and sustain jobs, repair and rebuild America's infrastructure, and protect the environment.

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[3] Ernst, Michelle, *Setting the Record Straight: Transit, Fixing Roads and Bridges Offer Greatest Job Gains*, STPP 1/28/04.

[4] Analysis performed by Transportation for America.

2) As soon as possible, a federal review and Congressional hearings on controversial Texas projects, including the Trans-Texas Corridor. The hearings should include an investigation into the interference by the current Federal Highway Administration in the 80th Texas state legislative session (2007).

The Texas transportation "saga" has been the subject of hundreds of newspaper reports, state and national television, hundreds of hearings, and many tens of thousands of letters and calls to state and federal officials.[5] Though some progress has been made, the controversy remains unresolved. The federal government can play a positive role (rather than one of interference) and would be welcomed by Texans of all persuasions.

The attachments to this letter provide background information clarifying why we are asking for federal involvement.

In addition, we urge that federal investments in transportation infrastructure nationwide be focused on two objectives:

1) Bringing the current system, including highways, bridges, rail, bus, bicycle and pedestrian routes, up to a state of good repair and operation; and

2) Accelerating the construction and implementation of a robust public transportation infrastructure (light rail, bus rapid transit (BRT), bus, and pedestrian/biking systems in metropolitan areas and intercity rail) in more areas of the country.

We sincerely appreciate that the Transition Team has provided a place online for citizen input. That is a great start for a new day in American government. We stand ready to assist you in any way we can.

Respectfully,

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[5] Texans for Public Justice, a respected government accountability group, released a report this week, "Politicians Get Burned Paving Texas Backwards, From the Top Down," analyzing campaign contributions from the so-called "Road Lobby". *See* http://www.tpj.org/watchyourassets/ttc/

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Attachment A:
Background on Public-Private Partnerships (P3s) and Texas Projects

The Financial Risks of P3s and the Harm to the Public

While P3s can be a reasonable way to finance and enhance the performance of infrastructure projects, they can bring significant financial and administrative risks and expenses. Last July, US Senator Jeff Bingaman, chair of the Subcommittee on Energy, Natural Resources and Infrastructure of the US Senate Finance Committee held a hearing in Washington. Expert testimony from Dennis Enright, Principal, NW Financial, Jersey City, NJ, revealed that, "publically owned infrastructure is eligible to raise its capital in the tax exempt bond market which produces a cost of capital 30% lower than a private sector provider."[6] Enright also offered the same testimony at a hearing held by the Texas State Senate Transportation Committee on August 12, 2008, adding that, "This advantage has not waned with the financial chaos in the market place, if anything it has increased."[7]

P3s are usually designed to take advantage of the tax code to provide tax benefits for corporations and investors. Policy makers must evaluate whether each deal is designed to generate sufficient economic and public welfare benefits to counter these sometimes considerable tax costs. Dr. Pat Choate, one of our country's leading infrastructure economists, testified using the Indiana Toll Road as an example:

> *Because the lease is for more than 55 years, the IRS will treat the consortium as the owners, allowing them to depreciate their investment at an accelerated rate over 15 years. This is worth several hundred million. If at the end of 15 years, the lease is sold, the profits will be taxed at a low capital gains rate and the new owners can begin the depreciation process over for another 15 years.*[8]

Many P3s are designed to diminish the public sector's ability to modify the conditions by which an infrastructure asset will be managed during the period of a concession. Without a very well designed concession contract, this may leave the public at the mercy of the financial interests of the private corporation or investor that holds the asset lease. If the private companies decide that the infrastructure does not provide sufficient return, even with the tax breaks, then they may sell the asset to other interests. Investment giant, Maquarie Investment Group, with major investments in public infrastructure around the globe, just slashed its toll road portfolio value by $2.1 billion and warns of additional reductions before the end of the year, citing: "This outcome has been affected by changes to asset discount rates reflecting the current market environment, lower forecast traffic volumes driven by the recessionary environment in the northern hemisphere, higher assumed financing costs across the portfolio, and the impact of macro-economic factors such as long-term inflationary expectations and foreign exchange rates."[9]

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[6] http://finance.senate.gov/sitepages/hearing072408A.htm

[7] http://www.senate.state.tx.us/75r/Senate/commit/c820/handouts08/081208/Dennis_Enright.pdf.

[8] http://finance.senate.gov/sitepages/hearing072408A.htm

[9] http://business.theage.com.au/business/mig-slices-21bn-off-tollroad-portfolio-20081216-6zwj.html

Many Americans are concerned about whether P3s to date in America are providing sufficient protection for the public interest. At a February 13, 2007 Congressional hearing on Protecting the Public Interest in Public Private Partnerships to the Subcommittee on Highways and Transit of the House Committee on Transportation and Infrastructure, Frank Busalacchi, Wisconsin Secretary of Transportation, asked:

> *Should states be allowed to enter into long-term leases of the Interstate or National Highways that sell off – or lease for several generations – a part of our national system to a private entity? Is this in our national interest? Faced with uncertainty about future needs and goals, the states will try to spell out every detail of the partnership. But there is too much that is unknown about demographic trends, technological development, pollution concerns, equity needs, future congestion, and safety innovations. No contract, no matter how effective, can eliminate risk. We do not know enough to price or manage such long-term risks.*[10]

P3 deals necessarily involve risk sharing in return for sharing of return on investments. But these can be appraised only in an open process, with sound appraisals of costs, impacts, and benefits. Unfortunately, such conditions do not prevail in Texas. The ideas put forward in Appendix B offer principles that could reduce the risks that transportation P3s can pose.

Stimulus Package as it Relates to Texas

Texas is currently slated for $6.207 billion in infrastructure stimulus funds and, supposedly, $2.869 billion is for 60 "new" construction projects.

Our understanding is that the Obama stimulus package is intended to help our decaying infrastructure, which we assume means focusing on repair and maintenance of public infrastructure. As well, if new roads are going to be constructed, we assume that you agree they should be publicly supported, financially responsible and to have met federal requirements for environmental clearance. The Texas request for stimulus funds does not meet these qualifications.

The Austin area is at the top of TxDOT's list request for stimulus funds in Texas, so we will use Austin as an example. Our analysis of this request reveals the following:

$985 million total
$504 million (51%) 290E Toll road new construction
$184 million (19%) Other new construction
$177million (18%) Maintenance
$123 million (12%) Repair and rehab

From the TxDOT list, the Austin Region total is $985 million. $504 million is for 290E, and there are another $184 million in other new construction projects in the Austin District bringing the total to $680 million for 11 new construction projects that predominantly or entirely include new lanes, overpasses or something that shows these projects are obviously "new" construction. This is 70% of the $985

[10] http://transportation.house.gov/hearings/Testimony.aspx?TID=232

million total for the Austin Region. There are 95 total projects in the Austin Region - 89% are for repair, rehab or maintenance, so as, "... heavy with maintenance work and bridge repairs, with relatively few big new roads or road expansion projects" is correct only if the numbers are spun like a top. (We will provide backup materials provided by Bruce Melton, P.E upon request.).

As another example of the potential problems with TxDOT's request, consider the 290E project. 290E is a federal highway, which TxDOT intends to expand in Travis County and in the City of Austin with 4 new toll lanes, with feeder roads as alternate "free" lanes. However, the financial viability of this project is so precarious that the CAMPO (Capital Area Metropolitan Planning Organization) decided to "collateralize" this toll project with others around the region. The viability of the project is even more questionable when one considers traffic studies for 290E, which show a significant reduction in usage, information TxDOT did not present to CAMPO.[11] CAMPO also rushed the deal through before two new board members, who campaigned on this very issue, took their positions on the CAMPO board, subverting the electoral process. We would add that the Travis County toll projects, including US 290E, lack federal clearance with an Environmental Impact Statement (EIS). By TxDOT's admission, more than half of the planned highway capacity in Travis County is slated as tolled, and 45 percent of that mileage goes through low-income and minority communities.

Federal Highway Administration Interference

Concerns regarding public-private partnership toll roads, including the Trans-Texas Corridor, dominated the last Texas legislative session in 2007. A super majority of Texas legislators, in both chambers, attempted to pass a 2-year moratorium on these projects in order to sort out the dispute. FHWA Chief Counsel James D. Ray wrote a four-page letter to Michael Behrens, executive director of the Texas Department of Transportation, threatening the loss of federal highway funds if the legislature were to pass a two-year moratorium on public-private partnership toll facilities.[12] Although the FHWA retracted its threat when confronted by US Senator Kay Bailey Hutchison[13] and US Rep. Nick Lampson, who pointedly questioned Transportation Secretary Mary Peters in a committee hearing in May 2007, the damage during the fast-moving Texas legislative session was already done. The Governor vetoed critical legislation, without the threat of a veto override, we believe, due to this interference.

Agricultural Concerns

"The history of every nation is eventually written in the way in which it cares for its soil" - *Franklin Roosevelt (1882-1945) 32nd President of the United States-*

The state of Texas is still planning on placing a massive road and multi-modal utility corridor known as the Trans-Texas Corridor adjacent to IH-35, going through the Blackland Prairie, despite the vehement opposition of Texas farmers. The September 2008 *National Geographic Magazine* contains an important article, "Our Good Earth", discussing the fact that the world's future rests beneath our feet and*, "Today more than six billion people rely on food grown on just 11% of the global land*

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[12] http://www.corridorwatch.org/ttc_2007/doc/FHWA-HCC1-Letter.pdf

[13] http://www.corridorwatch.org/ttc_2007/CW00000207.htm

surface. Even less ground -- a scant 3% of the Earth's surface -- offers inherently fertile soil." According to the map included with this article, the Blackland Prairie is part of the 3% of the world's "highly fertile" land and is deemed "at risk".

Additional sources:

An award winning documentary, ***Truth Be Tolled Special Edition,*** by William Molina, a noted documentary filmmaker, has been just been published on YouTube, with parts #6 and #7 covering recordings of the pivotal State Senate hearing in March 2007.

We would end with a quick reference on the Trans-Texas Corridor and P3s in Texas to the respected site at http://CorridorWatch.org.

Attachment B

California Council of Land Trusts * California League for Environmental Enforcement Now * California State Parks Foundation * Coalition for Clean Air *

Communities for Clean Ports * Community Action to Fight Asthma * EndOil * Environmental Defense Fund * Food and Water Watch * Planning and Conservation League * Sierra Club California * Trust for Public Land

Principles for Public Private Partnerships

Public-private partnerships (P3s) are agreements between public entities and private entities in which there is some shared responsibility for risk and financing to fund infrastructure or manage and operate that infrastructure or public services. P3s can take many forms and have been used increasingly since the 1980s to fund infrastructure projects around the globe, including in California. California legislators, the Governor, business community members, organized labor, and environmentalists have lately debated proposed legislation that would expand the use of P3s in the state. Given this, environmental and health groups listed on this letterhead have considered and agreed that the following principles should govern P3s and be included in any legislation, statute or regulation addressing or expanding P3s.

1. P3s should only be used to *simultaneously* deliver high performance to achieve multiple public values, including environmental quality and public health. They should not be used simply to deal with public entity cash-flow problems. They should not be considered exclusively to build new capacity, but should be considered for improving operation of existing infrastructure.

2. Outcome-based standards to measure performance, including environmental performance, should be included in P3 agreements. Outcome-based performance standards focus on measurable objectives and allow flexibility in determining how best to achieve those objectives.

3. Environmental performance and protection goals should be incorporated early in the design of the P3 bidding process. These goals must include contributing to reducing air pollution and greenhouse gas emissions to achieve state goals; protecting parks and historic sites; conserving natural and recreational resources and working landscapes, including farmland and open space; and preserving wildlife habitat to help achieve the state's species protection goals.

4. P3 agreements must be developed with transparency, including ample opportunities for public oversight and comment. Experience shows that P3 agreements completed without public oversight fall short of meeting the full potential for P3s to garner public benefit. They also sour public opinion about P3s. Independent auditing of transportation and revenue forecasts before final project approvals will help reduce problems associated with overly optimistic proposals from P3 partners. The audit should include, but not be limited to, a clear explanation of the anticipated total cost borne by the user and the public, profits anticipated by the private entity and source of those profits, and anticipated externalities, expressed quantitatively and qualitatively, and who will bear those external costs.

5. P3 agreements should include enforceable compliance mechanisms and penalties that can come into play if it is shown in the periodic review or through other monitoring that the project is not meeting performance goals. Compensation and penalty structures included in the agreement should be aligned to clearly reward superior performance, including environmental

performance, and penalize for failure to meet performance standards. There should be incentives for timely compliance and for timely remediation of contracting failures.

6. P3 agreements must be designed to ensure that private entity default won't result in an interruption of services, sustained performance degradation, or loss of public investment. This should include contingency provisions or performance bonds in the concession contract.

7. Project selection must be driven by public interest rather than private profit motive or the promise of investor income.

8. P3 agreements must include periodic evaluation and public reporting by a qualified agency or third party on the project performance to ensure that the project is meeting agreed-upon performance. This review must occur not less than every three years.

9. These agreements should require an up-front estimate of the life expectancy of the facility and an assurance that the facility is functioning and in good condition upon the end of the contract. The public agency should disclose preliminary plans for continuing services or replacing the facility when the proposed service or facility has passed its useful life.

10. P3 agreements must ensure that guaranteed return to private investors should be reasonable and proportionate to the risk assumed by the investor.

11. P3 contracts must contain clear terms regarding how user fees will be set and adjusted to ensure that performance goals, including environmental and system performance goals, are met.

12. P3 toll road projects should be designed to improve the provision of public transit early in the project's contract life in corridors where transit investment is appropriate. Transportation P3s have an important role to play in improving public transportation performance. Dedicating P3 toll road revenues to public transit up front in corridors where transit services could play a role in mobility may help optimize benefits and increase the likelihood that the benefits of the toll road will accrue to a greater share of the potential travelers in the corridor, not just those who can afford to pay the tolls.

13. User fee diversions out of the project or corridor in which they are collected would be allowed for other purposes only if a project operator is meeting its financial obligations and satisfying the performance goals established for the project.

14. P3 agreements must not contain no-compete clauses.

15. P3 contracts should not exceed 35 years.