

DEPARTMENT OF TRANSPORTATION

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*Making Conservation
a California Way of Life.*

November 13, 2017

U.S. Department of Transportation
Office of the Under Secretary for Policy
Attn: Strategic Plan Comments
1200 New Jersey Avenue, SE
Washington, DC 20590

To Whom It May Concern:

The California Department of Transportation (Caltrans) respectfully submits the enclosed comments on the U.S. Department of Transportation (U.S. DOT) Draft Strategic Plan for Fiscal Year 2018–22.

Sincerely,

A handwritten signature in blue ink, which appears to read "Malcolm Dougherty", is positioned above the printed name.

MALCOLM DOUGHERTY
Director

Attachments

- 1) Caltrans Comments on the U.S. DOT Draft Strategic Plan for FY 2018-2022
- 2) Letter Dated July 14, 2017 from Caltrans Director Malcolm Dougherty to U.S. DOT Secretary Elaine L. Chao

California Department of Transportation's Comments on the U.S. Department of Transportation Draft Strategic Plan for FY 2018–22

DOT Mission, Organization and Key Legislation

The California Department of Transportation (Caltrans) recommends that in addition to a Mission Statement, the U.S. Department of Transportation (U.S. DOT) Strategic Plan should also include a Vision Statement describing its desired future state for the organization. For example, Caltrans' Vision Statement is "A performance-driven transparent and accountable organization that values its people, resources and partners, and meets new challenges through leadership, innovation and teamwork."

Safety

Caltrans supports the U.S. DOT's Safety Goals, Strategic Objectives and Strategies, which align with how Caltrans is approaching traffic and non-motorized safety in California. Caltrans would suggest U.S. DOT consider including "root-cause analysis" as a potential strategy in this section.

For example, Caltrans appreciates U.S. DOT's emphasis on reducing the disproportionate share of highway fatalities that occur on rural roads. However, as a State Department of Transportation (State DOT) that formulates policy and operates a highway system, we believe these types of questions merit further discussion, research and analysis:

- Does the disproportionate share of rural highway fatalities occur because these highways tend to be two-lane roads where head-on collisions are the most likely cause?
- Does the disproportionate share of rural highway fatalities occur because rural highways often do not have street lights at night?
- Does the disproportionate share of rural highway fatalities occur because these roads are more poorly maintained compared to urban highways?
- Does the disproportionate share of rural highway fatalities occur because rural roads are a greater distance away from first responders and hospitals, which makes getting timely lifesaving care very difficult?

Greater understanding of root causes will go a long way toward identifying the correct actions to take and maximizing their effectiveness.

Infrastructure

U.S. DOT's "*Leverage Funding*" Infrastructure strategy discusses incentivizing state and local infrastructure funding through competitive and formula grants and innovative finance programs. California recently enacted Senate Bill (SB) 1, the landmark "Road Repair Accountability Act of 2017," which was backed by a broad coalition of supporters and invests \$52.4 billion over the next decade to fix roads, freeways, and bridges in communities across California and put more dollars toward transit and safety. California is making significant investments in transportation and infrastructure, and is eager to partner with the federal government to advance important

projects, many of which are significant for both California and the entire nation. Caltrans recommends that U.S. DOT include a “look back policy” in evaluating funding through competitive and formula grants and innovative finance programs to reward states and local governments that have come to the table in a significant way (and have a track record of doing so) to support infrastructure projects as part of its “*Leverage Funding*” Infrastructure strategy.

U.S. DOT’s “*Streamlining and Stewardship*” Infrastructure strategy discusses the need to “streamline the environmental review process to deliver transportation projects more quickly and efficiently to provide timely benefits to users while safeguarding our communities and maintaining a healthy environment”. California is encouraged by the Trump Administration’s focus on streamlining the environmental review and permitting processes, and the state has developed a list of high-priority projects for consideration under Executive Order 13766, *Expediting Environmental Review and Approvals for High Priority Infrastructure Projects*.ⁱ At the same time, California remains firmly committed to safeguarding the environment and we would recommend that the U.S. DOT Strategic Plan emphasize the policy articulated in Executive Order 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*, specifically “a) safeguard our communities and maintain a healthy environment; b) ensure that Federal authorities make informed decisions concerning the environmental impacts of infrastructure projects; and c) to develop infrastructure in an environmentally sensitive manner”.ⁱⁱ

Additionally, the White House “2018 Budget Infrastructure Initiative Fact Sheet”ⁱⁱⁱ endorsed “putting infrastructure permitting into the hands of responsible State and local officials where appropriate.” In July, Caltrans Director Malcolm Dougherty wrote U.S. DOT Secretary Elaine L. Chao noting that Caltrans has been able to cut the regulatory burden on thousands of road projects because of the U.S. DOT’s willingness to assign the state the required reviews under NEPA. Director Dougherty recommended additional reforms to the NEPA Assignment program outlined in his July 14, 2017 letter (attached) to Secretary Chao, including: extending the term of years for NEPA Assignment authority agreements; clarifying that states with NEPA Assignment authority are acting as the lead federal agency; and allowing states with NEPA Assignment authority to participate earlier in the drafting of U.S. DOT NEPA-related federal rulemakings. Caltrans also recommends that these and other improvements to NEPA Assignment authority be mentioned as an Infrastructure “*Streamlining and Stewardship*” Infrastructure strategy.

U.S. DOT’s “*Prioritize*” Infrastructure strategy discusses the need to target Federal investments toward transportation projects that address high priority infrastructure needs. Specifically, it states that “Through competitive, discretionary grant programs DOT will support projects of national significance that support DOT goals, leverage Federal funds, transform how infrastructure is delivered, and promise a high rate of social and economic return.” In California, we believe high-speed rail projects fit this description.

The California High-Speed Rail Authority (Authority) recently announced it has met federal American Recovery and Reinvestment Act of 2009 requirements by fully investing the more than \$2.55 billion granted to the State since 2009 to build the nation’s first high-speed rail system. The Authority reported that these funds have created thousands of new jobs and generated approximately \$4 billion in economic activity in the Central Valley and across

California.^{iv} The State of California is now making significant state expenditures to fulfill its obligations under the grant and advance the project. The California High-Speed Rail project is transforming how infrastructure is delivered, including most recently the State of California's pursuit of NEPA Assignment authority from the Federal Railroad Administration (the first time ever for a rail project). Therefore, we would recommend that the advancement of high-speed rail projects be mentioned as part of U.S. DOT's "*Prioritize*" Infrastructure strategy.

U.S. DOT's "*System Reliability*" Infrastructure strategy focuses on working with State DOTs and other stakeholders to identify data sources and models to assess overall system reliability. While data sources and models are valuable tools to assess system reliability, Caltrans has also found value in collaborating with the land use and housing sectors because of their strong influence on transportation system performance. We suggest inserting the following language: "The DOT promotes collaboration with the land use and housing sectors so that system performance can be fully optimized when prioritizing transportation investments."

Caltrans appreciates the U.S. DOT Strategic Plan's emphasis on supporting investments to improve the efficiency of freight movements described in the "*Economic Competitiveness and Workforce*" Strategic Objective. Currently, California is the nation's largest gateway for international trade and domestic commerce, with an interconnected system of ports, railroads, highways, and roads that allow freight from around the world to move throughout the State and the entire nation. This system is responsible for one-third of the State's economic product and jobs, with freight-dependent industries accounting for over \$740 billion in gross domestic product and over 5 million jobs in 2014.

While California's freight transport system has already undergone extensive modernization over the last several years and will continue to leverage improvements already completed and those underway, Caltrans must take further action in close partnership with federal, regional, local, labor, business, and environmental and community-based leaders to achieve the next step in the evolution of the freight sector. We are already beginning to see technological advances in autonomous and connected vehicles, three-dimensional printers, and drones that change the realm of possibility for this system. The pace and timing of advances in technology must involve all stakeholders to determine how best to harness their environmental and community benefits, economic and job growth potential, and gains in system efficiency. Recognizing that the freight transport system is dynamic and continuously adjusting to meet ever-changing system demands, Caltrans looks forward to an ongoing partnership with U.S. DOT to keep freight at the forefront of new transportation system efficiencies and innovation.

Innovation

California is an active participant in several U.S. DOT innovation initiatives, and California entities provide significant state match funds when required. For example, U.S. DOT recently establishing ten Automated Vehicle Proving Grounds nationwide, two of which are located in California. Three California university led consortia are participating in the very successful University Transportation Center program continued under the Fixing America's Surface Transportation Act (FAST Act, P.L. 114-094). And FHWA's State Transportation Innovation Council EC

and Every Day Counts programs are embraced by Caltrans. The U.S. DOT should consider expanding these important innovation incubators.

Connected Vehicle safety and mobility benefits enabled by wireless vehicle-to-vehicle (V2V) and vehicle-to-infrastructure (V2I) communications will revolutionize the way people and goods are transported, and will serve as the foundation for implementation of highly-capable Automated Vehicles. Caltrans has invested significant resources to create and operate a Connected Vehicle Test Bed, gaining valuable experience with connected infrastructure, and partnering with several auto companies testing their vehicle systems. All of this work is based on, and complies with, the Dedicated Short-Range Communications (DSRC) standards for exchanging messages between the roadside infrastructure and vehicles. The U.S. DOT has an opportunity to significantly advance safety and mobility by implementing DSRC as the national standard for V2V and V2I communications.

Caltrans believes that the U.S. DOT Strategic Plan's emphasis on collection, management and integration of data, and particularly safety data, will benefit California and the nation.

ⁱ Governor Edmund G. Brown Jr. February 24, 2017 Letter to President Trump regarding California High-Priority Projects for consideration under Executive Order 13766;

https://www.gov.ca.gov/docs/2.24.17_Infrastructure_Letters.pdf

ⁱⁱ Executive Order 13807, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects* <https://www.whitehouse.gov/the-press-office/2017/08/15/presidential-executive-order-establishing-discipline-and-accountability>

ⁱⁱⁱ 2018 Budget Infrastructure Initiative Fact Sheet:

https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/fact_sheets/2018%20Budget%20Fact%20Sheet_Infrastructure%20Initiative.pdf

^{iv} Investing in California's Future Through the American Recovery and Reinvestment Act, https://buildhsr.com/flipbook/chsra_arra_2017/

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July 14, 2017

The Honorable Elaine L. Chao
Secretary
U.S. Department of Transportation
West Building, 1200 New Jersey Ave., SE 9th Floor
Washington, DC 20590

Dear Secretary Chao:

California recently enacted Senate Bill (SB) 1, the landmark "Road Repair and Accountability Act of 2017," which was backed by a broad coalition of supporters and invests \$52.4 billion over the next decade to fix roads, freeways, and bridges in communities across California and put more dollars toward transit and safety. California is making significant investments in transportation and infrastructure, and is eager to partner with the federal government to advance important projects, many of which are significant both for California and the entire nation. As the federal government is also planning to increase investment in the nation's infrastructure, now is an opportune time to make sure these joint investments can be delivered quickly, with lower costs to taxpayers and without diminishing environmental protections.

In February 2017, California Governor Edmund G. Brown Jr. wrote President Donald J. Trump to seek expedited environmental review for several California projects under Executive Order 13766, *Expediting Environmental Review and Approvals for High Priority Infrastructure Projects*. More recently, Governor Brown wrote the President and cited California's successful partnership with the U.S. Department of Transportation (U.S. DOT) implementing National Environmental Policy Act (NEPA) Assignment.

The California Department of Transportation (Caltrans) has been able to cut the regulatory burden on thousands of road projects because of the U.S. DOT's willingness to assign to the state the required reviews under NEPA. I have enclosed a Caltrans fact sheet¹ that illustrates what we have done together through our partnership - achieving time savings of months and years in reviewing and approving NEPA documents. As U.S. DOT works with Congress to develop Federal Infrastructure Investment Legislation this year, I would like to propose for your consideration a few additional improvements to 23 U.S.C. §§ 326 *State assumption of*

¹ Caltrans NEPA Assignment Fact Sheet:

http://www.dot.ca.gov/hq/env/nepa/pdf/nepa_assignment_fact_sheet_q39_050417.pdf

responsibility for categorical exclusion ("CE Assignment") and 327 Surface Transportation Project Delivery Program ("NEPA Assignment").

First, Caltrans believes that the term of years for CE and NEPA Assignment authority agreements with U.S. DOT should be lengthened for states with an established track record in these programs. Under current law, the statutory term of years for CE Assignment agreements is three years,ⁱⁱ and five years for NEPA Assignment agreements.ⁱⁱⁱ In 2016, Caltrans successfully renegotiated its CE and NEPA Assignment agreements; the process of renegotiating these agreements with U.S. DOT took approximately one year and two and a half years, respectively, and required the state to enact legislation extending its waiver of sovereign immunity.

Caltrans believes that the term of years for these agreements should be extended to ten years for states that have participated in the CE and NEPA Assignment programs for at least ten years and satisfactorily complied with the requisite annual auditing and monitoring requirements. Lengthening the Assignment agreement terms will reduce the workload on federal and state staff and mitigate the risk of these agreements lapsing before Assignment authority can be renewed. Should Caltrans' CE and NEPA Assignment agreements with U.S. DOT lapse, reapplying for these programs and renegotiating these agreements would likely be very time-consuming; in the interim, it would add time and cost to the delivery of projects. Additionally, the federal workforce would have to grow to perform this reassigned workload.

Second, Caltrans recommends that Congress, or the Administration, take steps to clarify that states that are delegated CE and NEPA Assignment responsibilities are acting as the NEPA federal lead agency. As the NEPA federal lead agency, Caltrans currently assumes the U.S. DOT's responsibility for completing technical studies, conducting consultation with federal permitting agencies, managing stakeholder and public outreach, and ultimately drafting and approving environmental documents. However, Caltrans has encountered some instances in which other federal agencies are not acknowledging Caltrans as the NEPA federal lead agency, which can delay Caltrans' completion of a NEPA document. In some instances, federal permitting agencies are refusing to accept Caltrans' NEPA approval, opting instead to produce their own documents, which can delay issuance of federal permits required to move projects forward.

Third, Caltrans recommends that states with NEPA Assignment authorities be allowed to participate earlier in the drafting of U.S. DOT NEPA-related federal rulemakings. State departments of transportation that are delegated NEPA responsibilities are invested with federal authority and have accumulated practical experience implementing NEPA and carrying out the federal environmental review process. U.S. DOT would benefit from allowing states with NEPA

ⁱⁱ 23 U.S.C. § 326(b)(3)(A).

ⁱⁱⁱ 23 U.S.C. § 327 (c)(5).

The Honorable Elaine L. Chao
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Assignment authority to help shape policy in this area prior to the publication of proposed rulemakings.

Finally, section 1309 of the Fixing America's Surface Transportation Act (FAST Act, Pub. L. No. 114-94)^{iv} creates a new program that would allow states with NEPA Assignment to conduct environmental reviews and make approvals for projects under state environmental laws (e.g., the California Environmental Quality Act (CEQA) in California) and regulations instead of NEPA. Participation in this program includes a two-year statute of limitations; however, the existing statute of limitations for the Federal Highway Administration's (FHWA) NEPA transportation projects is 150 days. The extended two-year statute of limitations for this program increases risks for timely project delivery. If the intent of FAST Act section 1309 is to substitute state law for NEPA, the statute of limitations should be reduced to the same statute of limitations as the applicable state law substituting for NEPA.

Moreover, just as Caltrans has found that some federal agencies have not acknowledged Caltrans as the NEPA federal lead agency under its current assigned authorities, similarly, this could also occur under the FAST Act section 1309 program with agencies not adopting a document prepared pursuant to state environmental laws (and consistent with federal law) when issuing federal permits, agreements, or decisions. If the intent of FAST Act section 1309 is to substitute state law for NEPA, the law should be clarified so that other federal agencies must adopt a document prepared pursuant to state laws (and consistent with federal law) as the NEPA document.

For additional information, please contact Giles Giovinazzi, Federal Transportation Liaison Caltrans, and the California High-Speed Rail Authority at (916) 214-6144 or by email sent to giles.giovinazzi@dot.ca.gov

Sincerely,


MALCOLM DOUGHERTY
Director

Enclosure

^{iv} 23 U.S.C. § 330.