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February 13, 2012

The Honorable Barbara Boxer
Chairman
Committee on Environment and Public
Works
United States Senate
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable James Inhofe
Ranking Member
Committee on Environment and Public
Works
United States Senate
456 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Boxer and Ranking Member Inhofe:

I am writing on behalf of the League of California Cities (League), which represents California's 482 cities, to comment on your legislation, Moving Ahead for Progress in the 21st Century (MAP-21). We applaud the bipartisan nature of the bill, and encourage you to continue to work with all parties to enact a comprehensive transportation bill for our nation.

We join our fellow transportation stakeholders from California in supporting the sustained funding levels for transportation and the focus on existing infrastructure maintenance and preservation. California recently completed a statewide transportation system needs assessment that identified a \$294 billion shortfall over the next ten years. Preservation and maintenance of California's local street and road system alone is facing a \$79 billion shortfall over the next ten years. Now is not the time to reduce funding or rely on unstable revenue sources. In fact, it is time for everyone to have a serious discussion about sustainable funding sources for future transportation investment. We look forward to partnering with you in that discussion over the next two years.

California cities also appreciate your commitment to expanding the use of innovative financing. In particular, the expansion of the Transportation Infrastructure Finance and Innovation Act (TIFIA) program will undoubtedly allow many California projects to proceed that might not otherwise have been able to. With an unemployment rate at 11.3%, ongoing state budget deficits, and cities across the state being forced to put much-needed public infrastructure projects on hold, California is in great need of the job creation and economic investment that would be generated by these projects.

MAP-21 provides a good framework for the nation to use moving forward. However, the League would like to take this opportunity to respectfully offer some suggested modifications in program areas with direct impact to California cities. These recommendations are as follows:

Project Streamlining

California cities have long supported streamlined project delivery and have been pleased by the results of California's involvement in the NEPA delegation pilot program as provided for in SAFETEA-LU. We encourage you to take this program one step further by creating reciprocity for NEPA and the California Environmental Quality Act (CEQA). In California, CEQA provides equal or greater protection than federal requirements, and we are confident that environmental stewardship would continue under what would be a more centralized and efficient system of implementing transportation projects utilizing CEQA independently.

If NEPA/CEQA reciprocity is not an option, please consider adopting the suggested amendments provided by the Orange County Transportation Authority for the NEPA delegation program (see attached). These amendments would eliminate vague language that could potentially undo the gains made in the present language.

Modifications to MPOs

The League must raise concerns with multiple provisions concerning Metropolitan Planning Agencies (MPOs) in MAP-21. More than any other state, California incorporates more local involvement into transportation planning. More than 75 percent of the Surface Transportation Program (STP) funding has been programmed by MPOs and smaller Regional Transportation Planning Agencies (RTPAs) for over 20 years. In addition, California has charged these agencies with additional regulatory and funding responsibilities. The population requirements contained in MAP-21 will not only create uncertainty for California planning processes, but will make it more difficult for local officials to participate in many areas of the state. We respectfully request that the current MPO thresholds be maintained or for a grandfathering clause to be added that would exempt California's MPO and RTPA structure. In addition, the League respectfully requests that you maintain the current STP funding formulas.

Funding for Essential Components of the System

The League must oppose the elimination of dedicated funding for transportation enhancements (TE) and Safe Routes to Schools (SRTS). These programs have long been an integral part of transportation funding, and should remain so. Since 1992, TE projects have added economic and safety value to city transportation systems and worked to reduce local congestion through expansion of bicycle and pedestrian transportation corridors and facilities. Removing the set-aside requirement for TE would discourage states from distributing funding for these much-needed projects. SRTS is also an important program, which benefits the most vulnerable of our transportation system users by providing safe routes for our schoolchildren. Nearly a quarter of traffic related fatalities for children occur while they are walking or bicycling, and there is a serious need for us to continue to improve our sidewalks and crosswalks. Eliminating this program would reduce awareness for the safe transportation needs of this population.

MAP-21 would also eliminate the Highway Bridge Program (HBP), which currently requires states to set-aside 15 percent of their annual apportionment for bridges located on public roads. HBP funding is often the only source for maintenance for bridges in both urban and rural areas. Without eligibility for funding or a dedicated federal funding source, local bridges will continue to deteriorate, threatening public safety, and the efficient movement of goods. Currently, California has 4,428 bridges that have been determined to be structurally deficient or functionally obsolete, 2,776 of which are local bridges. The needs assessment found that the needs for local bridges alone are \$2.6 billion. The importance of this resource should be recognized in the funding structure.

Congestion Mitigation and Air Quality

The League appreciates the need for the Congestion Mitigation and Air Quality (CMAQ) program. This funding is especially important for California cities, many of which have high populations in natural air basins that trap pollutants. However, the League requests the removal from MAP-21 of the requirement that 30 percent of the CMAQ funding for nonattainment and maintenance areas be spent on diesel-powered equipment retrofits. Transportation funding projects to reduce congestion and improve air quality in these areas is already too scarce, and states and regions may be able to identify other funding sources for diesel retrofit needs.

Thank you for this opportunity to provide comments on MAP 21. California's cities are eager to partner with you as you continue work on this important legislation, and we commend you on the tireless work you have done to bring MAP-21 forward. Please let me know if you have any questions or need any additional information, or contact our Washington representatives, Eve M. O'Toole and Dustin McDonald at (202) 419-2505 and (202) 419-2511 respectively.

Sincerely,

A handwritten signature in cursive script that reads "Chris McKenzie". The signature is written in dark ink and is positioned above the printed name and title.

Chris McKenzie
Executive Director

Suggested Amendments for Accelerated Project Delivery

- Early acquisition activities (Section 1302, p 342-6): clarify provisions about lead agency decision-making and Secretaries authority to impose “other conditions.”
- Efficiencies in Contracting (Section 1303): Section (C)(ii)(II) – Secretary may include undefined “appropriate provisions” in alternative construction contracts to achieve the objectives in NEPA. In Section (C)(iii), there is no timeline for Secretary’s approval.
- Assistance to Affected State and Federal Agencies (Section 1305): The requirement to develop a MOU prior to receiving funds could create delay
- Categorical Exclusions for Multimodal Projects (Section 1306):
 - Section (b)(3) requires the component of project covered by the CE to have independent utility, however, in multimodal projects the various sections are usually mutually dependent.
 - Section (c)(5)(B) - It is unclear what can be included within the “extraordinary circumstances” that the Secretary can use to require further analysis before a CE can be used.
 - Section (d)(2) – It does not specify the timeframe for when the cooperating authority must complete their review of the project’s satisfaction of NEPA conditions for categorical exclusion.
- Programmatic Agreements and Additional Categorical Exclusions (Section 1310): If DOT retains discretion whether or not to include terms, how can grantees can insist on having them.? See use of “may” in section (d)(2) and (3).
- Accelerated Decision-making in Environmental Reviews (Section 1311): In section (b) the term “to the maximum extent practicable” is not tight enough to incentivize the completion of incorporation, and the exceptions described in subsections (b)(1) and (b)(2) are broad enough to swallow the entire rule.
- Memoranda of Agency Agreements for Early Coordination (Section 1312): Section (b) creates a loophole to the requirement that the Secretary and relevant federal agencies provide technical assistance (if requested) with the use of the phrase “to the extent practicable and appropriate.”
- Accelerated Decision-making (Section 1313). One of the more unique provisions - may elevate issue resolution issues all the way up to the President, and imposes fines if decisions are not made by appropriate agencies. Breaks new ground and offers hope for a cultural shift in how approvals and permitting is conducted, if implemented properly. However, there are a number of ambiguities, including: (1) use of “may” in the section (4)(A) related to the interim decision allows broad discretion; (2) use of “good cause” in section (5)(A)(iii) to allow extension of time; and (3) use of “approval” in section (6)(B)(ii)(I) and who determines when the application, permit, license or approval is complete