ATTACHMENT B

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Monthly Legislative Report – April 2021

April Advocacy Meetings

Congressman Mike Levin (D-CA) – We facilitated a meeting with Congressman Levin to discuss OCTA projects, FY22 appropriations, and support for direct funding to local projects. We also discussed the Lower Ortega Highway Widening project and submitted a request for funding, working with staff to provide supplemental information ahead of Committee deadlines. We also followed-up to discuss opportunities in the upcoming Surface Transportation Reauthorization for long-term direct funding.

Congresswoman Young Kim (R-CA) – We facilitated a meeting with Congresswoman Kim to discuss OCTA projects, FY22 appropriations, and opportunities in the Highway Bill. We discussed ridership numbers during the pandemic and the need for additional funding to support rider confidence activities, and the outlook for ridership revenue in calendar year 2021.

Congressman Lou Correa (D-CA) – We have been in very close contact with Congressman Correa and his staff this month to submit requests for FY22 appropriations and the Surface Transportation Reauthorization. We provided Congressman Correa with support letters and supplemental information for the Transit Security Operations Center (TSOC), and the signal synchronization projects ahead of Committee deadlines and followed-up on submission. We also discussed opportunities to provide input during upcoming Homeland Security Committee and Transportation and Infrastructure (T&I) Committee hearings.

Congressman Alan Lowenthal (D-CA) – We have been maintaining close communications with Congressman Lowenthal and his staff this month to follow-up on our meeting in late March, and to discuss our FY22 programmatic appropriations requests. We also discussed the Surface Transportation Reauthorization process and opportunities to testify or provide stakeholder input to the House T&I Committee.

Congresswoman Katie Porter (D-CA) – We followed-up with Congresswoman Porter's senior staff to discuss our meeting in late March regarding OCTA projects and funding needs. We discussed opportunities to secure new funding for the purchase of zero emission buses and the timeline for a broad infrastructure package.

Congresswoman Michelle Steel (R-CA) – We have been in communication with Congresswoman Steel's senior staff to discuss the Surface Transportation Reauthorization process.

Senator Dianne Feinstein (D-CA) – We have been in frequent communication with Senator Feinstein's office to discuss FY22 appropriations and the Surface Transportation

Reauthorization. We submitted an online request for the TSOC and the West Santa Ana Branch High-Capacity Transit Corridor study. We later followed-up to discuss the timeline for consideration and submission to the Committee.

Senator Alex Padilla (D-CA) – We have been in close contact with Senator Padilla's transportation staff to discuss the timeline and process for submitting Community Project Funding (CPF) requests for FY22 appropriations. We provided staff with an update on OCTA projects and funding needs and discussed opportunities in the Senate's Surface Transportation Reauthorization process.

Congressman Pete Aguilar (D-CA) – We followed-up with Congressman Aguilar and his staff this month to discuss FY22 appropriations requests and the timeline for CPF consideration in the subcommittees. We also discussed zero emission bus funding in the infrastructure bill in Congress and the outlook for new funding opportunities.

House Appropriations: Transportation, Housing and Urban Development – We continue to be in close contact with professional staff in the Majority and Minority regarding FY22 appropriations to follow-up on our programmatic and CPF requests for local transportation priorities funding. We also discussed the timeline for subcommittee markups and opportunities to provide additional information or support documents.

House Transportation and Infrastructure Committee – We have been in communication with Chairman DeFazio and his senior staff to discuss Member Designated Projects and the process for consideration. We discussed the timeline for Committee hearings on the Surface Transportation Reauthorization, markups, and opportunities to provide stakeholder input directly to the Committee. We also discussed the outlook for a larger infrastructure proposal later in the year, and new opportunities for funding. With Minority staff, we discussed their position on tolling provisions like we saw in H.R. 2 last session.

Senate Banking, Housing, and Urban Affairs Committee – We have been in close contact with professional staff to discuss progress on the Surface Transportation Reauthorization. We discussed the process for transportation project requests in the Senate, and the outlook for a larger infrastructure package. We also provided an update on OCTA projects and ridership and discussed opportunities to secure additional funding for rider confidence.

Senate Commerce, Science, and Transportation Committee – We have been in communication with professional staff on the Senate Commerce Committee to discuss the surface transportation reauthorization and the timeline for Committee Markups. We also discussed support for direct funding and project designations in the Surface Transportation Reauthorization.

Fiscal Year (FY22) Appropriations

Senate Republicans have decided to keep their 2019 conference rule prohibiting the use of earmarks during a closed-door conference meeting. This decision ends weeks of internal debate within the Senate GOP conference about whether to participate in community project funding requests in the FY22 appropriations process along with House and Senate Democrats and many House Republicans. It is worth noting that the conference rules are non-binding, and therefore Republican Senators are able to request earmarks for community projects in their respective states without facing repercussions. Some Republican Senators that have long supported the return of earmarks and have indicated they would be requesting community projects regardless of a change in conference rules, while a separate group of 15 Republican Senators signed a pledge (*available here*) to uphold the conference rules and not participate in requesting earmarks. As previously reported, Senate Appropriations Committee Chairman Patrick Leahy (D-VT) has indicated that should Republican Senators participate in the earmark process, he would split community project funding evenly between the parties.

On Friday, April 9th, the White House released a budget outline of the President's FY22 spending priorities. The 58-page skinny budget is requesting topline discretionary spending in the amounts of $769 billion for non-defense programs and $753 billion for defense. This would equate to a 16% increase in non-defense spending and a 1.5% increase in defense. The President's full budget is expected to be released later this month.

The President's budget is often used as a framework for Congress, but it has no statutory authority. Congress will have final say on all discretionary spending. Specific to transportation, the budget asks Congress for:

- **DOT Discretionary**: 25.6 billion (+14.3% compared to FY21 enacted)
- $625 million for a new **passenger rail** competitive grant program to invest in passenger rail as a competitive, low-carbon option for intercity travel.
- $375 million for **Consolidated Rail Infrastructure and Safety Improvement** grants to improve safety, throughput, and reliability of the Nation's rail network.
- $2.7 billion for **Amtrak**, a 35-percent increase, to provide improvements and expansion on the Northeast Corridor and throughout the Nation's passenger rail network.
- $2.5 billion for the **Capital Investment Grant** program, a 23-percent increase from the 2021 enacted level, to improve accessibility to high-quality transit.
- $250 million for grants for transit agencies to purchase **low- and no-emission** buses, more than double the amount provided in 2021.
- $110 million in new funding for grants and technical assistance to communities to improve access to destinations and foster community vibrancy. This program would serve as a down-payment on advancing **transportation equity**.

- $1 billion for the **Better Utilizing Investments to Leverage Development** (BUILD, now called RAISE) grant program.
- The discretionary request significantly increases the budget for the Office of Civil Rights to further the President's equity agenda.

The full FY22 Discretionary Request can be found HERE.

A three-page press release from OMB can be found HERE.

In the House, Budget Committee Chairman John Yarmuth (D-KY) indicated he does not anticipate the Committee will mark-up a FY22 budget resolution until June, and so in the interim House Democrats were considering utilizing a "deeming" resolution to set a topline limit for FY22 discretionary spending. Deeming resolutions are typically used when the House and Senate have not agreed on a budget resolution but allow Congress to employ regular legislative procedures to deal with issues on an ad hoc basis. Adopting a topline limit for FY22 discretionary spending would allow the House to consider appropriations bills on the floor prior to adopting the FY22 budget resolution. Chairman Yarmuth said he expected the House Appropriations Committee would use the President's budget outline (available here) to help determine the specific allocations for each of the 12 spending bills. Pushing formal consideration of a budget resolution until June also gives Democrats more time to decide whether they will move forward with using the reconciliation process to pass an infrastructure package (based on President Biden's *American Jobs Plan*).

Infrastructure

Negotiations on a potential infrastructure package continued with a meeting hosted by President Biden and Transportation Secretary Pete Buttigieg at the White House with a bipartisan group of ten lawmakers to discuss the size and scope of Biden's $2.2 trillion *American Jobs Plan* infrastructure proposal. On April 28th, President Biden mentioned this proposal during a Joint Session Address to Congress. The proposal asks Congress to provide roughly:

- $621 billion to modernize transportation infrastructure
  - $115 billion to modernize bridges, highways, roads and main streets in critical need of repair
  - $20 billion to improve road safety
  - $85 billion for Transit
  - $80 billion for Amtrak's repair backlog
  - $175 billion for investments in domestic Electric Vehicle companies and grants/tax credits for electric vehicle charging station construction
  - $25 billion for airports
  - $17 billion for inland waterways
  - $20 billion for a new program to reconnect neighborhoods and improve racial equity
  - $50 billion in dedicated investments to improve infrastructure resiliency

    - Investments in protection against wildfires, sea level rise, and other climate change effects
- $111 billion for Clean, Safe, Drinking water
    - $45 billion for the EPA's Drinking Water State Revolving Fund and WIIN Grants
    - $56 billion in grants and loans to states, tribes, territories, and disadvantaged communities
    - $10 billion to monitor and remediate PFAS in drinking water
- $400 billion to help care for the aging and those with disabilities
- $300 billion to boost the manufacturing industry
- $213 billion on retrofitting and building affordable housing
- $100 billion to expand broadband access, among other investments
- $100 billion to build a more resilient electrical grid
- $100 billion for new public schools
    - $50 billion in direct grants
    - $50 billion in leveraged bonds
- $25 billion to upgrade child care facilities
- Would raise the corporate tax rate from 21% to 28% and seek to capture additional corporate tax revenue by taxing offshore tax havens

A link to the White House Factsheet can be found HERE.

In addition to concerns with other aspects of the proposal, Republican lawmakers have expressed opposition to Biden's proposal to raise the corporate tax rate from 21% to 28% and, as previously reported, have alternatively proposed user fees to offset infrastructure costs. President Biden reportedly indicated he is open to compromising on a corporate tax increase.

Additionally this month, a group of Republicans Senators led by Environment and Public Works (EPW) Committee Ranking Member Shelley Moore Capito (R-WV) unveiled the framework of a $568 billion infrastructure proposal (*fact sheet available here*) focused on the traditional definition of infrastructure. This proposal is a counteroffer to President Biden's *American Jobs Plan* in an attempt to spur bipartisan negotiations and avoid Democrats using the budget reconciliation process to pass an infrastructure package without needing Republican support. Specifically, the group's framework proposes:

- **$299 billion** for roads and bridges through the Federal Highway Administration (FHWA)
- **$65 billion** in additional spending for broadband infrastructure through the Federal Communications Commission (FCC) and National Telecommunications and Information Administration (NTIA)
- **$61 billion** for public transit systems through the Federal Transit Administration (FTA)
- **$44 billion** for airports through the Federal Aviation Administration (FAA)

- **$35 billion** for drinking water and wastewater infrastructure through the Environmental Protection Agency (EPA)
- **$20 billion** for rail through Amtrak and the Federal Rail Administration (FRA)
- **$17 billion** for ports and inland waterways, through the U.S. Army Corps of Engineers and Maritime Administration; and
- **$13 billion** for safety programs through the Federal Motor Carrier Safety Administration (FMCSA) and National Highway Traffic Safety Administration (NHTSA)

Ranking Member Capito indicated this framework is based off several key principals and goals:

- **Federal funding should be:**
  - Fiscally responsible based on need.
  - Partner with spending from state and local governments.
  - Encourage private sector investment.
  - Flow through existing formula programs and proven discretionary programs.
- Federal Programs and Policies should:
  - Avoid restrictive "one-size-fits-all" requirements
  - Expedite the environmental review and permitting process
  - Reduce regulatory burdens
  - Spur innovation and the development of new technologies

In a direct counter to the President's plan, the GOP framework specifically calls for preserving the 2017 tax cuts, including extending the $10,000 cap on the state and local tax (SALT) deduction and preserving the corporate tax rate.

Clean Energy Tax Credits

This month Senate Finance Committee Chairman Ron Wyden (D-OR), along with two dozen Democrat cosponsors, announced the *Clean Energy for America Act*, his latest proposal for clean energy tax reform (Text HERE; Fact Sheet HERE; Section-by-Section HERE). The bill would consolidate about 40 existing energy-related tax breaks into three separate categories of incentives: for clean electricity, clean transportation fuels and vehicle electrification, and energy efficiency and conservation. Specifically, the bill includes the following incentives:

- **Incentives for Clean Electricity:** Creates an emissions-based, technology-neutral tax credit for the production of clean electricity that is open to all resources but limited to facilities with zero or net negative carbon emissions. Facilities may choose between a "production tax credit" of up to 2.5 cents per kilowatt hour or an "investment tax credit" of up to 30-percent of investments in the year the facility begins service. Investments in critical grid improvements would qualify for a full-value investment tax credit.

- **Incentives for Clean Transportation:** Provides long-term incentives for battery and fuel cell electric vehicles and electric vehicle charging. Additionally, it would provide a technology-neutral tax credit for domestic production of clean transportation fuel that would be open to all resources but limited to fuels that are at least 25-percent cleaner than average.
- **Incentives for Energy Conservation:** Provides performance-based tax credits for energy efficient homes and tax deductions for energy efficient commercial buildings and promotes conservation in both new and existing buildings.

The bill would repeal certain tax incentives for fossil fuel companies, including expensing of intangible drilling costs, credits for enhanced oil recovery, coal gasification, and more, and would ensure oil companies are not specifically exempted from the 2017 tax law's global minimum tax. The bill would also create a tax credit bond for facilities producing clean electricity or clean transportation fuels with the maximum credit being 70% of interest on the bond.

Title II of the proposal includes the following on Alternative Fuels Credits:

Proposal: The bill creates a technology-neutral incentive for the domestic production of clean fuels. It also extends for one year the alternative fuel tax credit and adds eligibility for non-liquid hydrogen and other forms of CNG. (Note: we have been advocating for a similar extension with House Ways & Means). For the new incentives, the level of benefit depends on the lifecycle carbon emissions of a given fuel. Lifecycle emissions take into account the "well to wheel" emissions profile, from production of the feedstock for the fuel through to its use in a vehicle. Fuels may qualify for the credit if the fuel's lifecycle emissions are at least 25 percent less than the current U.S. nationwide average.

Zero and net-negative emission fuels qualify for the maximum incentive of $1.00 per gallon. Qualifying production is restricted to production in the United States of fuel that is used or sold. Between now and 2030, qualifying fuels must become increasingly cleaner in order to qualify for the credit. Fuels produced before 2026 may qualify if the fuel's lifecycle emissions are less than 75 kilograms of carbon dioxide equivalents per million British thermal units (kg CO2e per mmBtu).

This amount is reduced to 50 kg CO2e per mmBtu for 2026 and 2027, 25 kg CO2e per mmBtu for years 2028 and 2029, and, starting in 2030, only fuels with lifecycle emissions at or below zero may qualify for any incentive. Fuels must be at least transportation grade – suitable for use in a highway vehicle or aircraft – but may be used for any business purpose, including as transportation fuel, industrial fuel, or for residential or commercial heat. Taxpayers wishing to receive credits must pay wages at not less than local prevailing rates and utilize registered apprenticeship programs. The Treasury Department and the EPA are required to establish safe harbors for fuels that are produced using similar feedstocks and production pathways.

The legislation simplifies the task for these agencies by allowing similar technologies (no more than 10% emissions profile difference) to be grouped together for purposes of calculating credit rates. For emerging fuels that are produced using feedstocks or pathways that have not been previously reviewed, Treasury and EPA are directed to offer provisional guidance for credit rates no later than one year after a taxpayer requests approval of the pathway. Final guidance is required no later than two years after request.

The credits are set to phase out when emission targets are achieved: when EPA and DOE certify that the transportation sector emits 75 percent less carbon than 2021 levels, the incentives will be phased out over five years. Facilities will be able to claim a credit at 100 percent value in the first year, then 75 percent, then 50 percent, and then 0 percent.

High Speed Rail Hearing Set for May 6th

The House Transportation and Infrastructure Subcommittee on Railroads, Pipelines, and Hazardous Materials has scheduled a hearing on May 6th entitled "*When Unlimited Potential Meets Limited Resources: The Benefits and Challenges of High-Speed Rail and Emerging Rail Technologies.*" In addition to hearing from existing rail stakeholders, witnesses will include representatives from the hyperloop industry. A full witness list is included below:

- The Honorable John Porcari
  - Former Deputy Secretary
  - United States Department of Transportation
- Ms. Rachel Smith
  - President and Chief Executive Officer
  - Seattle Metropolitan Chamber of Commerce
- Mr. Phillip Washington
  - Chief Executive Officer
  - Los Angeles County Metropolitan Transportation Authority
- Ms. Danielle Eckert
  - International Representative
  - International Brotherhood of Electrical Workers
- The Honorable Carbett "Trey" Duhon III
  - Judge
  - Waller County, Texas
- Mr. Andy Kunz
  - President and Chief Executive Officer
  - U.S. High Speed Rail Association
- Mr. Carlos Aguilar
  - President and Chief Executive Officer
  - Texas Central High Speed Rail
- Mr. William Flynn
  - Chief Executive Officer
  - Amtrak
- Mr. Josh Giegel
  - Chief Executive Officer and Co-Founder
  - Virgin Hyperloop

- Mr. Andres De Leon
    - Chief Executive Officer
    - Hyperloop Transportation Technologies
- Mr. Michael Reininger
    - Chief Executive Officer
    - Brightline Trains
- Mr. Wayne Rogers
    - Chairman and Chief Executive Officer
    - Northeast Maglev

Senate Environment and Public Works Hearing on the Long-Term Solvency of the Highway Trust Fund

On April 14th, the Senate EPW Committee held a hearing entitled "*Long-term Solvency of the Highway Trust Fund: Lessons Learned from the Surface Transportation System Funding Alternatives Program and Other User-based Revenue Solutions, and How Funding Uncertainty Affects the Highway Programs."* During the hearing Vehicle Miles Traveled (VMT) as a revenue sources was discussed at length. Ranking Member Capito (R-WV) said "*You mentioned that if the VMT was put into effect at one cent per mile [on commercial trucks], it would generate $2.6 billion. But previously you had mentioned the shortfall [of the Highway Trust Fund] is $195 billion. So we've got a big gap here. I guess my question is—back to Mr. Shenkle—in some of the states' pilot studies, is one cent per mile a marker that's been used for success here? Because it's not going to generate enough to hit our shortfall at all*." The full hearing and witness list can be found HERE.

Biden Cabinet

President Biden's Cabinet have all been confirmed by the Senate, however hundreds of executive branch nominations requiring Senate confirmation remain. Consequently, this month the Senate continued consideration of several executive nominees with the full Senate confirming Polly Trottenberg as Deputy Secretary of Transportation by a vote of 82-15, Wendy Sherman as Deputy Secretary of State by a vote of 56-42, Gary Gensler as Chairman of the Securities and Exchange Commission (SEC) by a vote of 53-45, and Brenda Mallory as the Chair of the White House Council on Environmental Quality (CEQ) by a vote of 53-45.

CRS Report on Autonomous Vehicle Testing and Deployment

On April 23rd, the Congressional Research Service released a report entitled "*Issues in Autonomous Vehicle Testing and Deployment".* The report discusses the introduction of two bills related to Autonomous Vehicles (AVs), H.R. 3388 – SELF DRIVE Act and S. 1885 – AV START Act. Some provisions in both bills could be included in the next Highway Bill. The report also recognizes that existing regulations, and unanswered questions, need to be addressed to avoid impeding innovation and development in this space. The report notes that Congress has not enacted legislation to address gaps in regulation due to disagreements on several key policy issues. These include the following:

- The extent to which Congress should alter the traditional division of vehicle regulation, with the federal government being responsible for vehicle safety and states for driver-related aspects such as licensing and registration, as the roles of driver and vehicle merge.

- The number of autonomous vehicles that NHTSA should permit to be tested on highways by granting exemptions to federal safety standards, and which specific safety standards, such as those requiring steering wheels and brake pedals, can be relaxed to permit thorough testing.

- How much detail legislation should contain related to addressing cybersecurity threats, including whether federal standards should require vehicle technology that could report and stop hacking of critical vehicle software and how much information car buyers should be given about these issues.

- The extent to which vehicle owners, operators, manufacturers, insurers, and other parties have access to data that is generated by autonomous vehicles, and the rights of various parties to sell vehicle-related data to others. The 117th Congress may address these issues in legislation reauthorizing surface transportation programs. The current surface transportation authorization expires at the end of FY2021. Policy decisions about the allocation of radio spectrum and road maintenance also may affect the rate at which autonomous vehicle technologies come into use.

The full report can be found HERE.