Recommendations for the Surface Transportation Reauthorization Bill

Ensure the financial integrity of the Highway and Transit Trust Funds

Proposed Change	*Examples of how this would be of use..*
Increase the amount available under the TIFIA program.	The TIFIA program has provided loan guarantees to a limited number of projects, restricted primarily by the cap on the amount available.
Allow privatization of Safety Roadside Rest Areas, Park and Ride lots, and other facilities.	Public-private partnerships are needed to help deliver essential services to the traveling public.
Provide federal authority to impose tolling as a revenue stream.	States need every available revenue source to leverage state and federal funds for capacity increasing projects and other purposes.
Authorize a bond funding program, similar to *Build America Bonds (BABs).*	BABs provide states with an option to access the corporate taxable bond market, which is broader and deeper than the tax-exempt market.

Rebuild and maintain our transportation infrastructure

Proposed Change	*Examples of how this would be of use..*
Make some or all additional "stimulus" funding "ministerial" rather than "discretionary", eliminating the need to comply with NEPA and other requirements.	This would allow the rapid construction funding of existing state and local projects without having to go through federal processes. Projects would still have to comply with state and local requirements, and all health and resource protection Federal requirements, such as the Clean Water Act and the Endangered Species Act.

Make goods movement a national priority

Proposed Change	*Examples of how this would be of use..*
Incorporate a measurement of each state's contribution to national goods movement goals as part of the federal distribution formula.	Goods movement on highways in states that act as primary goods movement conduits contributes significantly to the deterioration of the highways and the congestion around ports of entry. These states provide a service to the national economy at a cost in facility maintenance, repair, and replacement.
Develop competitive fund for high-priority national goods movement projects.	Existing funding mechanisms need to be revised to reflect the significance of freight movement on a national basis. Project improvements for goods movement have a positive impact on the corridor being improved as well as on a system wide basis. This would provide a mechanism to ensure that freight projects receive a higher priority and funding levels that would enhance the movement of people, goods, information and services. A national formula could

	be developed for programming projects and receiving resources from multiple funding sources, i.e., Priority Index Number and utilize consistent cost/benefit criteria.
Include port planning in the current criteria for existing planning grants to allow for funding of Port-to-Corridor Management Plans (P2CMPs).	The funding of P2CMPs will allow local, state, federal and private sectors to coordinate and develop these plans to identify and fund projects along these P2CMPs to deliver projects, similar to California's CSMPs. In California, the four main P2CMPs are Los Angeles-Long Beach/Inland Empire, Bay Area, San Diego/Border and the Central Valley.

Reduce congestion in metropolitan areas

Proposed Change	*Examples of how this would be of use..*
Provide incentives for metropolitan congestion pricing.	Encourage the application of congestion pricing in the nation's most congested metropolitan areas by providing funding incentives.
Change 23 USC 135 Section 135(d)(1)(E) to add to this planning factor "the integration of land use and transportation, including consistency with development patterns."	This would allow states and regions more flexibility to support and provide incentives for integrated land use, transportation and housing planning that utilize the latest travel forecast data, along with the latest modeling tools, and that identify alternative/preferred scenarios that reduce congestion within and between metropolitan areas. The State of California has implemented its statewide California Interregional Blueprint, and six of the 25 largest metropolitan areas in the nation have participated in Regional Blueprint Planning efforts that consider land use and transportation while evaluating travel within and between metropolitan areas. These Blueprint programs promote the linking of transportation, land use and housing through the development of visions for future growth based on the latest modeling tools that identify alternative/preferred scenarios that reduce congestion within and between metropolitan areas.

Streamline project delivery and extend California's NEPA delegation

Proposed Change	*Examples of how this would be of use..*
Allow states to have permanent NEPA delegation after successful completion of pilot program and include Section 6005 Air Quality Conformity Determinations.	This would allow California, and other states in the future, to assume permanent NEPA delegation. It would permanently remove redundant reviews by both Federal Highways Administration and Caltrans. FHWA retained Air Quality Determinations under SAFETEA-LU Section 6005, but not under Section 6004. Further delegation of Air Quality Conformity determinations streamline approval of documents under Section 6005.
Allow the use of the TEA conformity exemption	The law and EPA's conformity regulations currently exempt

for historic railroad structures.	most TEA projects from conformity requirements, but explicitly prohibit use of the exemption for TEA projects affecting historic railroad structures. Historic issues with railroad structures should be dealt with through the standard 106 and 4(f) processes, and not through a conformity exemption, unless the project would in fact not be neutral for air quality purposes.
Make TEA more flexible.	Expand the TEA category for wildlife passage to include fish passage.
If a proposed project is included in the air quality conformity determination for a Regional Transportation Plan, no further action should be required to meet the requirements of the Clean Air Act of 1990.	Regional Metropolitan Planning Organizations are required to provide analysis on air quality conformity as part of the approval process for their Regional Transportation Plan. Because air quality conformity is best addressed at regional levels, it is a duplication of effort and ineffective for projects to require additional conformity determinations.
Allow NEPA approval if the final quality conformity determination is made before project construction.	This would allow final design to continue while additional conformity requirements are completed. Since final approval for construction could not occur during a lapse, this change would not result in any actual impacts to air quality conformity.
Remove funding plan barriers to NEPA approval.	Allow projects to continue through NEPA approval even if a Long Range Plan is temporarily no longer financially constrained due to the current volatile economic situation. This could be done by allowing NEPA approvals while Long Range Plans are being amended, as long as the project is proposed to remain in the amended Plan. This would avoid the delays in project delivery when world or national economic situations temporarily affect transportation funding.
Allow a state's environmental document to be adopted by the federal lead agency for purposes of NEPA compliance, if a state's environmental review has been completed prior to federalization of a proposed project.	The State of California has implemented legislation that duplicates NEPA and applies even more stringent requirements, i.e., CEQA defines a significant impact as one for which a "fair argument" can be made. Other states have similar state environmental laws. Allowing the federal lead to adopt the "mini-NEPA" document rather than preparing and approving a separate NEPA document would avoid duplication of effort. The adoption could be similar in form to a re-evaluation and would not require public circulation.
New projects located within an area which had previously completed NEPA clearances should be exempt from further NEPA and associated federal environmental legislation reviews, if no new right-of-way is required for the construction of these projects.	If a state DOT purchased right-of-way under federal authorization, new projects located within that right-of-way should not result in additional impacts to the environment. For example, if a DOT purchased a new freeway alignment with a 100 foot median, then decided to widen in the median, it would not be required to mitigate again for "habitat" if endangered species utilized that land in the future. This would include making existing right-of-way exempt

	from consideration as "habitat" under the Endangered Species Act. Currently, endangered species such as San Joaquin Kit Fox, Desert Tortoise, and Tipton Kangaroo Rats often utilize the medians and shoulders of busy highways as foraging habitat. While this habitat is marginal at best, the law as currently interpreted requires that agencies purchase replacement habitat for these impacts. This modification would hold agencies free from retribution for incidental harm caused by routine maintenance and construction within existing right-of-way.
Allow at-risk detailed design prior to NEPA completion	During the NEPA process, a Preferred Alternative may be identified in the Draft Environmental Impact Statement (EIS). Current federal regulations do not allow the use of federal funds to begin "detailed design" prior to the Record of Decision, which results in unnecessary delay in the project delivery process. Section 6002 of SAFETEA-LU, Efficient Environmental Reviews for Project Decision Making, provided some relief from these restrictions, but it still limits design to only those elements that relate to environmental issues, environmental mitigation, or environmental permits. Flexibility is needed so that the state DOTs may continue to move forward with the project development process in a timely fashion using both federal and non-federal funding – at their own financial risk – prior to the finalization of the NEPA process.
Allow advanced right-of-way acquisition.	Advanced right-of-way acquisition is intended to provide for the preservation of corridors for future roadway expansion. Corridor preservation's goal is to minimize development in areas that are likely to be required to meet transportation needs in the future. Current federal environmental restrictions make it extremely difficult to identify and preserve transportation corridors for the future. Corridors must be part of a fiscally-constrained Long-Range Plan in order to use corridor preservation funds. It is often difficult to get FHWA to participate in preparing an environmental document for a project that will be built 15 or 20 years in the future. Most of the right-of-way acquired now is for widening or expansion projects on existing facilities, as opposed to projects on new alignments. In these cases, the decision regarding the location of the transportation improvement has already been made – thus, there is almost zero chance of biasing the NEPA process. Typically right-of-way acquisitions are "environmentally neutral" events – in other words, no damage is done to the environment as a result of simply purchasing a plot of land.
Eliminate or modify the Efficient Environmental Review Process that was established under Section 6002 of SAFETEA-LU.	SAFETEA-LU created a new Efficient Environmental Review Process (Section 6002). While the intent of the section to promote early coordination was admirable, the procedural

	requirements of Section 6002 are duplicative of already existing environmental processes. This duplication has lead to less efficiency and more confusion during the NEPA process. An alternate approach would be take make the Section 6002 process optional, rather than mandatory. If Section 6002 is kept, a subsection should be added to the process that bars a participating agency from raising substantive issues during the permitting process that it should have been aware of and raised during the NEPA process.
Establish a priority for infrastructure projects at federal permitting agencies that includes firm deadlines.	The acquiring of federal permits represents a significant component of the time required to deliver a project. This requires a significant investment of resources, and erodes the value of available funds. Federal agencies should be given a firm, limited time to provide permits, and an automatic appeal process for transportation infrastructure projects should be instituted when permit reviews exceed that time that is external to the permitting agency.
Allow program-level reimbursement ability for state's oversight of local agency projects.	The stewardship agreement between FHWA and Caltrans delegates certain oversight responsibilities of the local agencies from FHWA to Caltrans. The Stewardship agreement also states that some of these oversight responsibilities cannot be further delegated to local agencies in California. The oversight of these local agency projects cost over $35 million to California which is not reimbursed by FHWA. This is a cost that California can no longer afford. Since local programs have been identified by FHWA as a "high risk", the expectation on the oversight has only been increasing. FHWA acknowledges these costs to be eligible for reimbursement provided the cost is charged to individual projects. Since at any given time there are about 5000 locally administered projects, charging Caltrans' oversight to these projects is not feasible. We propose to allow states to collect reimbursements for oversight on a single project designated for oversight cost.
Revise the federal transparency reporting process.	Federal Funding Accountability and Transparency Act's Sub-award Reporting requires the state to report certain data after the end of each month on ALL federally funded projects. The California Department of Transportation (Caltrans) has completed three cycles of report. It has been burdensome and confusing at times to comply with this new federal reporting requirement. The data submitted has the potential to be incomplete or incorrect. We feel this reporting requirement can be met more efficiently if the sub-awardee information is included in FHWA's Financial Management Information System transactions. The states will report this data at the time of requesting authorization

	for projects (not after the authorization). This will ensure 100 percent completeness. The data received by FHWA will be uniform throughout the nation.
Properties under 100 years of age would be exempt from evaluation under Section 106 of the Historic Preservation Act.	As America ages and construction techniques improve, a greater number of properties will reach the current age of 50 years without major modifications. Continuation of this standard would significantly increase the time and expense for compliance with the Historic Preservation Act. By modifying the evaluation criteria from 50 to 100 years, you would move beyond an individual person's lifetime and into the realm of history. It would save both time and resources.
Eliminate duplicate evaluation of historic properties.	The law as currently written has duplication of effort. Historic properties are evaluated and protected under Section 106 of the Historic Preservation Act and require a redundant evaluation under Section 4(f) of the Department of Transportation Act.
Exempt routine maintenance and restoration projects from Section 106 of the Historic Preservation Act.	Projects which replace existing pavement (overlays, slab replacements) would be exempt from further analysis under Section 106 of the Historic Preservation Act. These projects result in minimal additional disturbance of "native soils." This modification would result in a reduction of time and effort on routine road maintenance.
States need the ability to do programmatic advance mitigation for natural resource impacts based on mutually approved modeling, rather than having to connect mitigation costs to already designated projects in federal plans.	By allowing states to develop and implement a statewide advance mitigation program, states could (a) reduce project delays, (b) reduce mitigation costs and (c) improve mitigation quality. Greater flexibility to do programmatic advance mitigation, rather than project specific, in the next authorization would facilitate this innovation.
Consolidate environmental mitigation negotiations.	Once NEPA is completed and a Biological Opinion issued by US Fish and Wildlife Service, any modifications to Endangered Species listings or refinements to project footprint would not require the issuance of a new Biological Opinion. FHWA or their designee via delegation would provide USFWS with an administrative amendment which would include additional provisions to address any modifications to the project. USFWS would not be required to perform any action, other than acknowledgement of the amendment. Any projects changes which require a supplemental NEPA document would not apply to this provision. US Fish and Wildlife Service negotiates a specific mitigation ratio based upon the quality of impacted habitat. At the time the Biological Opinion is issued, less than 30 percent of design work is completed. Often minor refinements will result in changes within the area of impacts, i.e., originally it was 5 acres and now it is 6.5 acres. This change in area would require that formal consultation with USFWS be reopened and a formal amendment to the Biological

	Opinion issued. As the NEPA lead agency, it is appropriate for FHWA or its designee to prepare an administrative amendment which modifies the impact area and increases the mitigation required to reflect the ratios agreed in the original Biological Opinion. This would save time and effort at both agencies and solidify the agreements made during the NEPA process.
Man made water conveyance systems should be exempt from consideration as "waters of the U.S."	Currently canals and ditches can be considered as "waters of the U.S." under Section 404 of the Clean Water Act. Moving a concrete lined ditch could trigger the NEPA 404 process and result to greater impacts to historic and natural resource in an attempt to avoid impacts to these features. This change would reduce time and costs associated with project delivery.
Streamline the federal Transportation Improvement Program (TIP) Amendment process.	Current regulations require that many relatively minor changes to project cost, scope, or schedule require time consuming and paperwork-intensive amendments to the TIP. This can occur as a result of relatively minor changes to project limits (as little as over a tenth of a mile), or changes in project cost (regardless of the amount of change). Relaxing the requirements for amendments will greatly expedite revisions and save resources.
Change the period of the TIP/STIP from four years to five.	Current regulation requires the TIP/STIP to cover four years and be updated at least every four years (California updates every two years, to have a pool of programmed projects to draw on). If the period of the TIP/STIP were increased to five years, with an update at least every four years, it would cut in half the workload of Metropolitan Planning Organizations and states for updates.
Adopt provisions that allow projects that are funded through multiple federal programs to use only the rules, restrictions and reporting requirements of the largest contributing program.	Individual project funding packages are sometimes made up of several different sources; each applied to the portion of the project that is appropriate for that source. Each source has its own set of rules, schedules, restrictions and reporting requirements that quickly complicate project delivery.
Provide clarification under Section 4(f) of the Department of Transportation Act that for public properties to be considered as a 4(f) property under recreational use, the primary function of the property must be recreation. This modification would specifically apply to portions of State and National Parks and Forests which are not primarily used for recreational activities.	Currently school playgrounds are often determined to be 4(f) properties because they allow public recreational activities during non-school operation. The use of schools for "recreational" activities is secondary to their primary function, but because of this use impacts to parking lots and other school properties is often deemed a 4(f) impact. In addition to this, our National Parks are served by highway systems. Often minor maintenance work, including rehabilitation can result in 4(f) impacts even when the only impact may be realignment of an existing driveway.
Current environmental policy includes "No net loss to wetlands". Allow for enhancement to existing wetlands to be counted as "mitigation"	If a project impacts a wetland of marginal quality, current mitigation would include acquisition of "credits" at a bank which has created wetlands by expansion of existing

for impacts to wetlands.	systems, or involve creation/expansion of wetlands at another location. This proposal would expand the potential to include "enhancement" activities to count towards wetland impacts more explicity. If you impacted an acre of wetlands you could restore 5 acres of poor quality to good quality via a management plan. This process would help improve the overall quality of existing wetlands and encourage DOTs to adopt management programs which Army Corps of Engineers could approve to gain "credits" towards future impacts.
Broaden and extend the option to use warranties in highway construction contracts.	Currently, federal regulations allow for warranties to cover specific *products* or *features* of a construction project (such as the pavement), but are not allowed to cover an entire project. Recently, as part of changes made to federal regulations to accommodate design-build contracting, the warranties section of the Code of Federal Regulations was amended to allow "general project" warranties on design-build projects on the National Highway System, which covers all parts of a construction project. In addition, projects developed under a public-private agreement may include warranties that are appropriate for the term of the contract or agreement, which could be many years. These allowances have not been made for traditional design-bid-build projects, which are still restricted, as noted above, to specific products or features. While general project warranties will likely not be used on all traditional design-bid-build projects, their use could encourage innovation in construction processes or the products that are used since the potential for failure would be covered by the warranty. Finally, even the general project warranties allowed for design-build projects are permitted only for short periods of time, or as the regulations state, "generally one or two years." Unfortunately, one to two years is not typically long enough to determine if a roadway or bridge structure has been built correctly. A more appropriate minimum length of time for a warranty would be in the range of five to 10 years.
Allow federal funds to be used for mitigation banking/advanced mitigation.	For example, TEA shares could be used to fund advanced mitigation and projects could reimburse those funds when capital funds are available. This change would allow for expedited permitting under existing laws/regulations and would provide immediate relief without requiring any changes to federal funding levels.
Remove environmental and right-of-way requirements for any Non-infrastructure Projects.	For example, the Safe Routes to School (SRTS) Program consists of infrastructure and non-infrastructure (NI) programs, and both programs are currently delivered using the process for typical construction projects. However, the NI Program is a program that provides for the education,

	encouragement, enforcement, and evaluation of SRTS programs in local communities. These types of activities are non-construction work that should not require NEPA clearance or right-of-way certification as currently required. Delivery of the NI program can be streamlined by handling it similar to FHWA State Planning and Research, Partnership Planning and FTA State Planning and Research Grants which are discretionary grants awarded through a grant application solicitation process similar to the SRTS-NI Program.
For projects under $3 million, use a one component process for issuing authorization to proceed.	This change would provide authorization for preliminary engineering, right-of-way, and construction in a single action. Because this would only apply to small projects, it would expedite the process and allow the projects to move between phases easily.

Consolidate federal programs

Proposed Change	*Examples of how this would be of use..*
California supports the consolidation of existing Federal Surface Transportation Programs to focus on ten programs as recommended by the National Surface Transportation and Revenue Study Commission (Commission). We also support increased flexibility for project eligibility and funds transferability among the 10 programs and across different US DOT administrations using needs-based criteria.	There are currently 108 programs under five administrations. The Commission recommended consolidating into ten programs. Additional flexibility is also needed to allow projects under the 10 programs be funded to achieve national objectives. The current system, to "flex" funds, between the modal administrations is cumbersome and often results in project delay. This process should be streamlined, so that funds can immediately be used for projects meeting required criteria. More flexibility is also needed to transfer funds among the 10 programs.