



Congress of the United States
House of Representatives

September 4, 2015

The Honorable Bill Shuster
Chairman
Committee on Transportation &
Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable Peter DeFazio
Ranking Member
Committee on Transportation &
Infrastructure
2163 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Shuster and Ranking Member DeFazio,

I write to express the critical and imminent need for reliable transportation and infrastructure funding within my district, as well as districts like it across the country. Currently, one in four of our nation's major roads are rated "poor or mediocre,"¹ one in four bridges need significant repair or expansion, and 45% of Americans are still without access to public transit.² Yet the surface transportation authorization – which provides federal contract authority for construction projects – is on the verge of expiring. And the Highway Trust Fund – which supplies the federal share of transportation infrastructure funding to states and municipalities nationwide – is weeks away from running out.

This leaves us at a crossroads. America needs a plan that will bring our nation's transportation infrastructure into the 21st century and fully values our country's roads and bridges as the important piece of interstate commerce, economic development, and quality living that they are.

This means that **Congress must pass a forward-thinking, long-term surface transportation reauthorization that draws on a predictable and sustainable source.** It also requires that we focus our limited federal resources on programs that have a track-record of success.

As the Representative of Colorado's 2nd Congressional District, I am very familiar with the overwhelming funding and finance concerns, geographic challenges, and sheer complexity of the processes involved in highway development and expansion, for which my district is a microcosm.

Sizable highway improvements and public transit projects – like the recently completed addition of express lanes along US 36 between Denver and Boulder – have a huge impact on our communities. They ease congestion and pollution, lower commuter times, increase safety and save Americans time and money. Colorado only achieved success with these projects through our ability to access federal funds and leverage federal finance opportunities. In order to solve

¹ *Bumpy Roads Ahead: America's Roughest Rides and Strategies to Make our Roads Smoother* (The Road Information Program, July 2015) 1.

² *American Association of State and Highway Transportation Officials Member Survey*, 2013.

the significant congestion issues along I-25 North from Denver to Fort Collins, and I-70 from Denver to the Central Mountains our communities are depending on the federal government to do its part and be one source of the financing. But to do so would first require substantial, long-term commitments to the following.

The Federal-Aid Highway Program

The Federal-Aid Highway Program (FAHP) funds a range of critical highway and bridge infrastructure projects throughout the country – as determined and selected by states. Since the early 1920s, these funds:³

- 1) have largely been apportioned to the states by a predetermined, codified formula, with the deployment of project funding left to state DOTs;
- 2) are required to be matched by states and municipalities; and
- 3) are required to be spent on a network of federal aid roads.

The FAHP, unlike most other federal programs, does not rely on appropriated budget authority. Instead, the FHWA has contract authority over dollars in the Highway Trust Fund (HTF) and may obligate – or promise to pay – funds before they are appropriated.⁴ Core FAHP program grant funding could supplement the overall funding and finance sources leveraged for the expansion of I-25 North and I-70.

When establishing a set of priorities for a long-term highway reauthorization, Congress should consider placing the following programs at the top of its list:⁵

- 1) **National Highway Performance Program (NHPP)** – NHPP supports improvements to roads within the National Highway System (NHS) by funding projects aimed at achieving national performance goals related to (a) infrastructure condition, (b) safety, (c) mobility, or (d) freight movement.
- 2) **Surface Transportation Program (STP)** – STP is the federal aid highway program with the broadest eligibility net, making funds available for any federal-aid highway, bridge project on public roads, transit capital project and routing project for non-motorized transportation, as well as for bridge and tunnel inspection or inspector training.
- 3) **Highway Safety Improvement Program (HISP)** – HISP supports projects that improve the safety of road infrastructure by correcting hazardous road locations or intersections or by making needed road improvements. Safety concerns are integral to the debate surrounding I-25 and I-70, both of which create an incredible potential for pile-ups and other dangerous incidents relating to heavy and constant congestion.
- 4) **Congestion Mitigation and Mitigation Air Quality Improvement Program (CMAQ)** – CMAQ was established to fund projects aimed at emission reduction from motor vehicles – by lessening the number of cars and amount of time spent idling, or stuck in traffic, along federal aid highways. This goal speaks very directly to the type of congestion mitigation and mass transit opportunities direly needed along corridors like I-25 and I-70.

³ Robert S. Kirk, *Federal Aide Highway Program (FAHP): In Brief* (Congressional Research Service, December 16, 2013) 1-9.

⁴ Kirk, *Federal Aide Highway Program (FAHP): In Brief*, December 16, 2013

⁵ Kirk, *Federal Aide Highway Program (FAHP): In Brief*, December 16, 2013

Transportation Infrastructure Finance and Innovation Act (TIFIA)

The Transportation Infrastructure Finance and Innovation Act established a federal mechanism for providing credit assistance to relatively large transportation infrastructure projects through secured loans, loan guarantees and lines of credit. This type of federal credit assistance has successfully provided funds to high-cost projects, like that proposed for the expansion of I-25 North. TIFIA provides alternative financing at rates lower than would otherwise be possible. This approach to financing also has a successful track record in leveraging non-federal funds, including from states, localities and the private sector.⁶

Both I-25 North and I-70 will require an investment of billions of dollars to complete the project. Programs like TIFIA – which aim to finance major infrastructure overhauls or expansions like those needed along I-25 and I-70 – could play a valuable role in our long-term finance strategies for each of these two projects. TIFIA has also been used by the Denver metro area’s Regional Transportation District (RTD) to successfully leverage finance dollars for the development of RTD’s FasTracks system – a series of rail lines that have provided alternatives to commuters across the Denver Metro area. It is of great disappointment, however, that plans remain stalled to construct the Northwest Rail Line – a vital artery for the economic and lifestyle needs of the northwestern Colorado. Increasing budget authority TIFIA could mean possible funding opportunities for completion of this critical line in the future.

There has been a significant demand from states for TIFIA assistance since the last surface transportation reauthorization – a tribute to how effective this program has been. The Senate moved to slash authorization levels for TIFIA in its recent long-term highway bill. I believe Congress should instead consider the critical need expressed by our states and municipalities and move to maintain, if not increase, budget authority in this year’s reauthorization legislation.

New Start/Small Start Funding for Bus Rapid Transit (BRT) Systems

The Federal New Starts program has been used to successfully leverage federal dollars for the Denver metro area’s Regional Transportation District (RTD)’s FasTracks initiative. Meaning the legs that remain in need of construction under FasTracks– namely the Northwest Rail Line – could also potentially benefit from additional New Start funding. Increasing budget authority for the New and Small Starts pots could mean future investment in a rail line which, alone, could significantly move the needle toward alleviating congestion and freight corridor bottlenecks along our major northwestern thoroughfares.

Bus Rapid Transit (BRT) is a bus-based mass transit system aimed at providing expedited, assured arrival times while avoiding the exorbitant cost of building out light rail systems. In Colorado, BRT funding has been able to successfully increase the number of lanes available for use along major thoroughfares.

The highway reauthorization of 2005 – or the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA) – expanded the definition of BRT to include eligibility in the Small Starts program funding for “corridor-based bus capital projects.”

⁶ Robert S. Kirk and William J. Mallett, *Funding and Financing Highways and Public Transportation* (Congressional Research Service, June 17, 2015) 1 -29.

MAP-21, however, changed the definition of corridor-based bus rapid transit to require BRT projects to both (a) operate in a separated right-of-way designated for public transportation and (b) operate as frequently during non-peak hours as they do during peak hours. The result has been to severely restrict where and how dollars can be used for BRT expansion lanes and systems. The BRT system operating along US36 between Denver and Boulder, for example, would have been ineligible for federal development dollars under the language constraints added to MAP-21.

These restrictions are counterintuitive in states across the West and fail to align with practices merited by ridership demands. Dispersed, geographically challenged areas with little space for highway expansion cannot afford to reserve entire lanes for the use of a BRT system. Supplementing use of these lanes with other travel options that allow for selective, and thus limited, additional uses – such as High Occupancy Vehicle (HOV) and High Occupancy Toll (HOT) access – has been shown to successfully alleviate congested areas while maintaining heightened speeds in BRT lanes. Nor does it make sense to operate one as heavily on weekends as on weekdays. In places like Colorado, the need for BRT systems will never be as heavy during non-peak hours as it is during peak, making that requirement a needless financial strain on the operator. BRT systems should be held to a standard of ridership demand and assured arrival times, not arbitrary restrictions that limit local flexibility and control.

The Senate-passed long-term highway reauthorization strips the weekend requirement. We must also move to strike the harmful single-use lane limitation that has made Colorado, and many states like it, effectively ineligible for any new or existing BRT system funds.

Projects of National Significance

The Projects of National and Regional Significance (PNRS) budget line provides funding for high-cost projects that would make a significant, positive impact on transportation and commerce regionally or nationally. Such improvements are measured by their ability to meet one of two benchmarks: (a) improving performance of the Federal-aid highway system and/or (b) generating national economic benefits and increasing access to jobs – to an extent expected to exceed the costs of the project. This can be achieved through congestion reduction, heightened speed, and reliability and accessibility improvements, as well as projects aimed at increasing safety and reducing accidents along such corridors. Both I-25 and I-70 are major regional thoroughfares that impact commerce, tourism, job creation and transportation across the West. Expansion of either would be prime for recognition as a PNRS project.

Although \$500 million was authorized for PRNS megaprojects in MAP-21, actual allocation of these funds depends on appropriation by Congress. Three years later, we still haven't seen any of that money. To ensure funding commitments are met, Congress should authorize funding through the Highway Trust Fund instead of the general fund, through granting PNRS contract authority.

Freight Corridor Funding

Another commonly considered provision for this year's surface transportation reauthorization is one that is long overdue: the designation of appropriate funds and financing opportunities for investment in freight corridors. Commerce and American competitiveness globally are undercut

investment in freight corridors. Commerce and American competitiveness globally are undercut by congestion along corridors heavily utilized in moving freight because it literally slows companies' ability to transport goods.

For that exact reason, I-25 North between Denver and Fort Collins is plagued with miles of bottleneck traffic that hampers quality of life and economic development across the region. This route is one of the most important North-South freight corridors in the country and its deterioration has ripple effects for business and commerce stretching from North Dakota to New Mexico.

Federal Tax-Exempt Bonding

Encouraging federal tax-preferred bonds could benefit states and localities looking to leverage alternative financing sources. By raising the \$15 billion dollar cap on private activity bonds – \$11 billion of which is already committed – we make available significant additional resources for transportation infrastructure projects. President Obama suggested raising the cap to \$19 billion, something I think Congress should strongly consider including in this year's reauthorization.

Transportation and Regional Infrastructure (TRIP) Bonds are another innovative approach to transportation financing. Recently, a bipartisan bill was introduced in Congress that would authorize \$50 billion for tax-credit bonds that can be used over six years to finance transportation infrastructure projects. Authorizing tax-credit bonds could create new revenues and generate skilled, well-paying jobs for the proposed expansion and mass transit projects along the I-25 North and I-70.⁷

Elimination of Past Earmarks

When Congress officially abolished earmarks in 2010, we failed to fully and fairly align new policy with old funding structures and legislative commitments. The result being millions of dollars that hang in the balance between former funding commitments, and projects that have since been either scrapped or finished faster or more cheaply than was originally anticipated. Dozens of projects funded by transportation bills that passed between the years of 1989 and 2004 fall into this category – meaning an incredible amount of committed federal dollars sit in the US Treasury, no longer able to be spent.

Including a technical fix within this year's surface transportation reauthorization would eliminate earmarked projects that are still on the books, but are no longer fundable. Doing so has the potential to generate billions of dollars in combined federal, state, local and private investitures – money that could be used to fund projects that are in desperate need of it, such as I-70 and I-25 in Colorado. The House has a responsibility to iron out wrinkles caused by discrepancies in its prior decisions or actions, this fix would serve do so by aligning past legislation with our modern ban on earmarks and, in the meantime, free up billions of dollars in future transportation and infrastructure investments.

⁷ William J. Mallett, *Highway and Public Transportation Infrastructure Provision Using Public-Private Partnerships (P3s)* (Congressional Research Service, March 5, 2014) 1-22.

Highway Trust Fund; National Infrastructure Bank

According to US DOT, the solvency of the Highway Trust Fund remains at risk – Congress’ inability to sufficiently resupply the Highway Trust Fund with critical transportation infrastructure dollars has created significant instabilities and is cause for concern at the federal, state and municipal levels. If Congress fails to produce a sustainable source to fund transportation infrastructure, and allows the Highway Trust Fund to become insolvent, we could halt up to 6,000 highway and transit projects⁸ and jeopardize over 660,000 jobs nationwide.^{9 10} Passing a long-term transportation reauthorization is not, in itself, a solution. We must also find a way to fund it.

A variety of funding initiatives have been proposed to address the solvency of the Highway Trust Fund. I’ve offered one such proposal through legislation – the creation of a National Infrastructure Bank. This idea, supported by dozens of members on both sides of the aisle, would provide a creative financing mechanism by allowing U.S. multinational companies that have tax-deferred profits overseas to repatriate – or bring back to the U.S. – their earnings. Firms would “bid” for the right to bring back some of their foreign earnings by purchasing a bond, and the revenues from these bond sales would provide capital for establishing the Infrastructure Bank, which would, in-turn, provide low-interest loans to finance infrastructure projects.

Conclusion

The programs mentioned above make sense for both the needs in my district (I-70 and I-25) as well as other communities across the country. They have proven effective in solving transportation and infrastructure gaps in states and cities that are financially strapped and geographically challenged and that have major disparities between their resident populations and the number of people and vehicles regularly using the roadway.

I urge you to consider the critical finance and funding opportunities highlighted in this letter as you develop a long-term, six-year surface transportation reauthorization to bring America’s transportation and infrastructure into the 21st century.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jared Polis".

Jared Polis
Member of Congress

⁸ *American Association of State Highway and Transportation Officials Member Survey*, 2013.

⁹ *Employment Impacts of Highway Infrastructure Investment* (United States Department of Transportation Federal Highway Administration, August 27, 2015).

¹⁰ *Fact Sheet Map – 21 Funding Summary* (United States Department of Transportation Federal Transit Administration, September 24, 2012)