Agenda Item 6c

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February 2009 Monthly Report for MTC

To: Steve Heminger, Executive Director
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From: Tom Bulger, President
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Re: Monthly Report for February 2009

Date: March 6, 2009

A. **President Obama Signs the American Recovery and Reinvestment Act of 2009**

B. **President Obama Delivers 'Faux' State of the Union and Budget Details**

C. **Congress Works to Complete FY 2009 Appropriation Bills**

D. **Obama Rescinds FTA New Starts Rule & FHWA TIFIA Rule**

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H. **U.S. DOT Undersecretary for Policy Named**

A. President Obama Signs the American Recovery and Reinvestment Act of 2009

In February, we spent considerable time working with the Bay Area delegation to guarantee that the American Recovery and Reinvestment Act (ARRA) of 2009 included the most beneficial formulas and legislative language for the Bay Area. This activity was coordinated with the Commission's staff. We were successful in ensuring that the Bay Area received optimal formula funding; in addition, we successfully secured language concerning time limitations on the obligation of the stimulus funds.

Below is a brief snapshot of the transportation section of HR 1's conference report. This legislation is over 1,500 pages including the explanatory statements.

U.S. Department of Transportation Provisions

- $29 billion appropriated for highways ($27.5 billion apportioned via formula, $1.5 at the discretion of the U.S. Department of Transportation (U.S. DOT))
- $8.4 billion for transit
- $8 billion for high speed rail
- $1.3 billion for AMTRAK

Supplemental Discretionary Grants for National Surface Transportation System

- $1.5 billion appropriated to remain available until September 30, 2011 — The Secretary of Transportation shall distribute funds provided under this section as discretionary grants to be awarded to state and local governments on a competitive basis for projects that will have a significant impact on the nation, a metropolitan area, or a region.

- Projects eligible for funding provided under this section shall include, but not be limited to, highway or bridge projects eligible under Title 23, including interstate rehabilitation, improvements to the rural collector road system, the reconstruction of overpasses and interchanges, bridge replacements, seismic retrofit projects for bridges, and road realignments; public transportation projects eligible under Chapter 53 of Title 49, U. S. Code, including investments in projects participating in the New Starts or Small Starts, passenger and freight rail transportation projects; and port infrastructure investments, including projects that connect ports to other modes of transportation and improve the efficiency of freight movement.

- The Secretary may use an amount not to exceed $200 million for the purpose of paying the subsidy costs of projects eligible for federal credit assistance under Chapter 6 (infrastructure financing) of Title 23.

- A grant funded under this heading shall be no less than $20,000,000 and no greater than $300,000,000.

- No more than 20 percent of the funds may go to one state.

- Federal share of the costs for which a grant is made under this heading shall be, at the option of the recipient, up to 100 percent.

- The Secretary shall give priority to projects that require an additional share of federal funds in order to complete an overall financing package, and to projects that are expected to be completed within three years of enactment of this Act.

- The Secretary shall publish criteria on which to base the competition for any grants awarded under this heading not later than 90 days after enactment of this Act. Additionally, the Secretary shall require applications for funding provided under this heading to be submitted not later than 180 days after enactment of this Act, and announce all projects selected to be funded from such funds not later than one year after enactment of this Act.

Federal Highway Administration (FHWA) – $27.5 billion (formula)

- Funds will be apportioned no later than 21 days after enactment of the legislation.

- One hundred and twenty days following apportionment, U.S. DOT will withdraw 50 percent of the funds which remain unobligated and those funds shall be redistributed.

- One year following apportionment, U.S. DOT will withdraw all remaining funds and transfer funds to the supplemental discretionary program.

- The Secretary may provide a one-year extension if he feels that the state has encountered extreme conditions that create an unworkable bidding environment or extenuating circumstances. Before granting an extension, the Secretary shall submit in writing, a letter justifying his decision.

- Sub-allocates 30 percent of funds to urbanized areas of the state with an urbanized area population of over 200,000, these funds are not subject to the redistribution of amounts required 120 days following the date of apportionment clause.

- A number of set-asides are created:
  - Three percent of the funds shall be set aside for enhancement projects;
  - $105 million is set aside for Puerto Rico's highway program;
  - $45 million for the territorial highway program authorized in Section 215 of Title 23;
  - $60 billion is set aside for competitive ferry boat projects;
  - $550 million for Indian reservations and federal lands;
  - $310 million for Indian reservation roads;
  - $170 million for park roads;
  - $60 million Forest Highway Program;
  - $10 million for refuge roads; and
  - $20 million set aside for highway surface transportation and technology training program.

- Federal share is 100 percent

- Funds may not be used for 'advanced construction' as defined by Section 115(b) of Title 23

- Funds allocated are in addition to any funds provided in FY 2009 or FY 2010 and shall not affect the distribution of funds provided for in any other act

- Funds are not subject to any limitation on obligations

Federal Transit Administration (FTA) – $8.4 billion

- $6.9 billion shall be made available for transit capital assistance grants
  - Eighty percent of the funds appropriated for formula grants shall be apportioned using the urbanized formula (Section 5307), ten percent using the 'growing states and high density states formula factors' (Section 5340), and ten percent using the non-urbanized formula (Section 5311) of which 2.5 percent will be made available for transit on Indian reservations

- Funds will be apportioned no later than 21 days after enactment of the legislation

- One hundred and eighty days following apportionment, U.S. DOT will withdraw 50 percent of the funds which remain unobligated and those funds shall be redistributed

- One year following apportionment, U.S. DOT will withdraw all remaining funds and transfer funds to the supplemental discretionary program

- The Secretary may provide a one-year extension if he feels that the state has encountered extreme conditions that create an unworkable bidding environment or extenuating circumstances. Before granting an extension, the Secretary shall submit in writing, a letter justifying his decision

- Federal share is up to 100 percent

- $100,000,000 shall be set-aside for a discretionary program which shall provide grants to transit agencies for capital that will assist in reducing energy consumption or greenhouse gas emissions

- Funds are not subject to any limitation on obligations

- $750 million is appropriated for fixed guide-way infrastructure investment
  - Funds allocated under this clause may not be comingled with funding from prior years;
  - Funds will be apportioned no later than 21 days after enactment of the legislation;
  - One hundred and eighty days following apportionment, U.S. DOT will withdraw 50 percent of the funds that remain unobligated and those funds shall be redistributed;
  - One year following apportionment, U.S. DOT will withdraw all remaining funds and transfer funds to the supplemental discretionary program;
  - The Secretary may provide a one-year extension if he feels that the state has encountered extreme conditions that create an unworkable bidding environment or extenuating circumstances. Before granting an extension, the Secretary shall submit in writing, a letter justifying his decision; and
  - Federal share is up to 100 percent.

- $750 million is appropriated for New Starts
  - The Secretary shall make discretionary grants and shall give priority to projects that are currently in construction or are able to obligate funds within 150 days; and
  - Funds appropriated under this clause may not be comingled with funding from prior years.

Non-Department of Transportation Provisions

Federal Emergency Management Agency (FEMA)
- $150 million for **port security grants** – competitive grant program
- $150 million for **public transportation security and railroad security assistance** – competitive grant program

Environmental Protection Agency (EPA)
- $300 million for **diesel emission reduction** – priority for projects that maximize public health benefits by significantly reducing particulate matter emissions. The program also

targets geographic areas with high air pollution and air toxins, and areas that receive a disproportionate degree of air pollution, such as truck stops and ports.

Funding can be used for retrofit technology for a bus, medium-duty truck or heavy-duty truck, a marine engine, a locomotive or a non-road engine or vehicle, or programs or projects to reduce long-duration idling. Seventy percent of funds will be administered in a competitive grant program by the EPA. The remaining 30 percent will fund grants to states with approved programs. No local match required.

Department of Energy

- $300 million for **Alternative Fuel Vehicles Pilot Program** (Clean Cities) – provides grants to encourage the use of plug-in electric drive vehicles or other emerging electric vehicle technologies for up to 30 geographic areas. Grant recipients include state governments, local governments, metropolitan transportation authorities, air pollution control districts, and private or nonprofit entities. Eligible projects include acquisition of alternative fueled vehicles, fuel cell vehicles or hybrid vehicles, including buses for public transportation and ground support vehicles at public airports. The installation or acquisition of infrastructure necessary to directly support an alternative fueled vehicle, fuel cell vehicle, or hybrid vehicle project funded by the grant is also eligible.

- $3.2 billion for the Energy & Environment Block Grant Program – $2.8 billion allocated to cities/counties and states for programs and activities to reduce energy consumption, including a reduction in vehicle miles traveled (VMT). $400 million is allocated for competitive grants.

- $400 million for **transportation electrification**.

Non-Spending Provisions

- For each amount that is distributed to a state or agency thereof from an appropriation in the legislation, the governor of the state shall certify that the state will maintain its effort with regard to state funding for the types of projects that are funded by the appropriation. As part of this certification, the governor shall submit to the covered agency a statement identifying the amount of funds the state planned to expend as of October 1, 2008, from non-federal sources in the period beginning on the date of enactment of this Act through September 30, 2010, for the types of projects that are funded by the appropriation. If a state fails to maintain effort, the state is prohibited from receiving additional limitation for FY 2011.

- States are required to submit reports which describe project selection, job creation, and other factors.

- Cap on the transit portion of the transportation fringe benefit increased to $230 per month, the same level as parking. This provision will expire at the end of 2010.

U.S. DOT Secretary Ray LaHood announced that he has created a team to coordinate the agency's role in President Obama's economic recovery program. The team will ensure that economic recovery funding is rapidly made available for transportation infrastructure projects and that project spending is monitored and transparent.

The group, known as the Transportation Investment Generating Economic Recovery (TIGER) team, is composed of officials from across the department's operating administrations and offices. TIGER is co-chaired by Lana Hurdle, deputy assistant secretary for budget and programs, and Joel Szabat, deputy assistant secretary for transportation policy.

The team will identify and prioritize key highway, bridge, transit, rail, aviation and intermodal spending. The team will also develop reporting standards to accurately track the money as it is being spent and ensure that all accountability requirements are being met.

The U.S. DOT's chief economist and its Performance Management Office will coordinate with the Office of Management and Budget (OMB) and other White House offices on the performance measures that will be used to track job creation and other indications of the impact of each infrastructure investment.

B. President Obama Delivers 'Faux' State of the Union and Budget Details

In February, President Obama delivered a 'faux' State of the Union and sent Congress a sketch of his FY 2010 budget. The speech and budget outlined his legislative agenda for the rest of this year and gave a glimpse into the next several years. His speech focused on reviving the economy, improving health care, and promoting a sustainable energy policy.

The budget proposes a total amount of discretionary budgetary resources at U.S. DOT of $72.5 billion in FY 2010. This is about $1.8 billion more than the $70.7 billion appropriated in the omnibus FY 2009 appropriations bill which Congress is currently considering. It is impossible to analyze the U.S. DOT's total beyond FY 2010 without the fine print, but the budget does not appear to propose significant spending increases for surface transportation spending in 2010, nor does it propose new revenue for the trust fund. The document merely says that the Administration intends to work with Congress to reform surface transportation programs.

The budget proposes to reclassify some elements of transportation spending. The budget document states that the Administration proposes changing the budgetary treatment of transportation programs to show both budget authority and outlays as discretionary; this could have the effect of eliminating the budgetary firewalls that the highway trust funds have enjoyed.

House Transportation and Infrastructure chairman James Oberstar (D-MN) has sent a letter that strongly protests this proposed change. Neither U.S. DOT nor OMB has the final say on this proposal; Congress must address it as part of the assumptions underlying the budget resolution.

C. Congress Works to Complete FY 2009 Appropriation Bills

Following completion of the stimulus legislation, Congress turned its attention to completion of the remaining FY 2009 appropriation bills. On February 23rd, the House introduced and eventually passed HR 1105, an omnibus appropriations bill which will fund the federal government through the rest of FY 2009. This legislation represents a 'pre-conference' agreement between the House and Senate.

The FY 2009 bill includes $40.7 billion for highways and $10.231 for transit. The highway figure is $1.001 billion less than the authorized level due to a Revenue Aligned Budget Authority (RABA) modification. This is the first negative RABA modification since the authorization of Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

Federal Transit Administration funds are roughly $107 million less than what was obligated with the majority of that shortfall, $100 million coming from the formula and bus grants. The table below shows a breakdown of FY 2009 FTA funding programs:

FTA Program	Account	Funding
Formula and Bus Grants		$8.260 billion
	Urbanized Area Formula Grants	$4.55 billion
	Fixed Guideway	$1.666 billion
	Bus & Bus Facility Grants	$884 million
	Over-the-Road Bus Accessibility	$8.8 million
	Clean Fuels	$51.5 million
	Planning Programs	$113 million
	Elderly/Special Needs	$133 million
	Non-Urbanized Area Grants	$538 million
	JARC	$164 million
	New Freedom	$92.5 million
	NTD	$3.5 million
	Alternatives Analysis Program	$25 million
	Transit in the Parks and Public Lands	$26.9 million
Capital Investment Grants		$1.809 billion
Research and University Centers		$67 million
Administration		$94.4 million

We worked with MTC staff to identify the Bay Area projects included in the FY 2009 legislation (see Agenda Item 6b, Attachment 1).

The Senate is expected to take up the legislation the first week of March. The current continuing resolution expires on March 6, 2009.

D. Obama Rescinds FTA New Starts Rule & FHWA TIFIA Rule

New Starts

The FTA has announced that it is rescinding the New Starts rule published on August 3, 2007. FTA has indicated it is developing a new approach to the New Starts and Small Starts Program. This is in response to the SAFETEA-LU Technical Corrections bill. In addition, FTA rescinds the Contractor Performance Incentives for the Capital Investment Program. This will be implemented on a case-by-case basis and not by rule-making.

Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA)
In February, Secretary LaHood announced that he was withdrawing the January 21, Notice of Proposed Rulemaking (NPRM) on the TIFIA program issued by the Bush Administration. The notice says that the NPRM is being withdrawn to allow the Obama Administration to "review the program and decide what, if any, changes, it may wish to propose."

E. Congressional Meetings with MTC

In early February, Steve Heminger, Executive Director, met with the senior staff of the Senate Banking Committee (transit) and House Transportation & Infrastructure Committee concerning the next authorization bill. We also met with Senator Dianne Feinstein's appropriations staff and the Speaker Pelosi's staff regarding the stimulus legislation.

F. Preparations Underway for MTC's Legislative Trip

Throughout the month of February we continued to organize the Commission's annual legislative trip to Washington, D.C. This activity is primarily centered on scheduling congressional meetings with the delegation and senior members of the transportation committees. We are also finalizing all of the administrative requirements associated with the annual reception including extending invitations to VIPs and conducting organizing meetings with our partners. Additionally, we have organized legislative briefings for the Commission and Bay Area partners with the key transportation committees.

G. SAFETEA-LU Financing Commission Final Report

In February, the SAFETEA-LU National Surface Transportation Infrastructure Financing Commission (NSTIF) released its final report. The Commission unanimously called for a dramatic increase in surface transportation revenues including a gas tax increase (a 10-cent per gallon increase and indexing to the rate of inflation); a move to a VMT-based fee system (**despite recent comments by the White House**), tolling, congestion pricing, Public-Private Partnerships (PPPs), and even a carbon tax/cap and trade program. Highlights of the Commission's Report to Congress include:

- Increase the federal gas tax by 10-cents per gallon as soon as possible and then index at an unspecified rate;
- Increase the diesel tax by 13-cents per gallon immediately, and another 2-cents per gallon for freight;
- Double the Heavy Vehicle use tax; and
- Maintain the existing tractor/trailer sales tax and truck tire tax.

This is expected to generate $20 billion per year, which will only close the nation's estimated transportation shortfall by 30-40 percent. The estimated cost per typical household would be $9 per month or 0.5-cent per mile.

- VMT Transition:
  - Phase in VMT by 2020;
  - Set VMT fee at a level to fund federal share of needs (approximately 2-cents per mile for autos);
  - Invest in research and development as soon as possible;
  - Set federal standards and inter operability for X car year;
  - Fund pilot programs as soon as possible; and
  - Create an independent advisory oversight body to coordinate these activities.

- Tolling:
  - Allow expansion of interstate tolling for new capacity and for existing capacity under certain circumstances, i.e. on interstates in Metro areas with over one million population; and
  - Enhance TIFIA and State Infrastructure Bank's (SIB) private activity bonds and tax credit bonds to facilitate PPP's.

The full report is available at http://financecommission.dot.gov

H. <u>U.S. DOT Undersecretary for Policy Named</u>

In February, President Obama announced his intent to nominate Roy Keinitz, undersecretary for policy at the U.S. DUT. Roy Kienitz is currently the deputy chief of staff for Governor Rendell. Roy has been a leader on Gov. Rendell's staff for transportation, alternative energy, and environment initiatives since 2003. As part of Gov. Rendell's staff, Kienitz directed a number of major capital projects including the Pennsylvania Convention Center expansion, the Pittsburgh sports arena and the Port of Philadelphia. Prior to his time in Pennsylvania, Kienitz served as secretary of the Maryland Department of Planning where he implemented the state's smart growth policies. Kienitz has also served as the executive director to the Surface Transportation Policy Project, where he was a strong advocate for innovation in transportation policy. Kienitz's prior experience also includes working for former Senator Moynihan as chief of staff and the U.S. Senate Environment & Public Works Committee.

Kienitz has received various awards, including the Special Recognition Award from the National Park Service, U.S. Department of Interior for work promoting new transportation strategies for National Parks. Originally from California, Kienitz earned his bachelor's degree in Aquatic Biology from the University of California in 1983.

Roy is a very good friend and someone we believe we can work closely with.