

DEPARTMENT OF TRANSPORTATION

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March 30, 2009

«Address_Title» «First_Name» «Last_Name»
«Business_Title»
«OrganizationAgency»
«Street»
«City», «State» «District»

Dear «Address_Title» «Last_Name»:

On March 27, 2009, Governor Arnold Schwarzenegger signed into law Assembly Bill (AB) 3X-20, which accelerates California's ability to distribute highway transportation funding available through the American Recovery and Reinvestment Act of 2009 (ARRA). In addition to expediting the processes by which we can rebuild California's economy and increase employment opportunities for our citizens, this bill also confers important obligations on regional agencies programming ARRA funds. I am writing to outline your agency's general responsibilities as well as to remind you that California's actions under this bill will be closely watched by the Obama Administration and Congress.

The provisions of AB 3X-20 require that agencies accepting funds be responsible for implementing and complying with the federal requirements of using ARRA funds. These include the following:

- **ARRA Project Eligibility.** ARRA may fund any federal-aid eligible project and the project must be located on a federal-aid route. Projects on nonfederal-aid routes only include safety projects and Highway Bridge Program projects.
- **Certifications.** Three levels of certification are required under ARRA. The first two certifications require a financial maintenance of effort commitment (Section 1201 of ARRA) and a commitment that the State will apply for funding and use it to create or sustain jobs (Section 1607 of ARRA). These certifications have already been accomplished on a statewide level, and you do not need to be concerned about them. The third certification (Section 1511 of ARRA) requires recipients of ARRA funds to certify to the Secretary of the U.S. Department of Transportation (USDOT) that projects have been fully vetted against federal requirements and reflect a legal use of the funds. To date, the California Department of Transportation (Caltrans) has completed certification for 26 State Highway Operation and Protection Program projects. Governor Schwarzenegger has delegated statewide responsibility for additional Section 1511

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Certifications to me. I will provide the Secretary of USDOT with the 1511 Certification for your projects once I receive a similar certification signed by either the executive director or chairperson of your agency. Caltrans is working with the Federal Highway Administration (FHWA) to finalize the format and content of the certification that must be signed by your agency's executive director or chairperson. The certification form will be available by April 3, 2009, through the Caltrans Recovery Web site at www.dot.ca.gov/recovery.

- **Obligation Requirements.** Prior to obligation by FHWA, several steps must be completed. The project must be included in a federally approved Federal Statewide Transportation Improvement Program, programmed with ARRA funds, local and State 1511 certifications must be completed, with State certification posted at the USDOT Web site, and a request for authorization with complete supporting documentation must be submitted to Caltrans. Please contact your local Caltrans District Office for assistance with any of these requirements.
- **Obligation Deadlines.** Since ARRA is intended to stimulate the economy immediately through direct jobs creation, it contains strict deadlines to obligate federal funds. Approximately \$900 million of the State-apportioned highway funds must be obligated by June 30, 2009, with the remainder of State and all regionally apportioned highway funds obligated by March 2, 2010. Funds not obligated by these deadlines will be apportioned to other states that meet the obligation deadlines. To ensure that California does not lose funding due to a failure to obligate, AB 3X-20 contains earlier deadlines (June 1, 2009, and February 1, 2010, respectively) when regions must inform Caltrans of their ability to obligate by the required federal deadlines. Funds not obligated in a timely manner will be redistributed to other projects by Caltrans. Under AB 3X-20, highway funds through ARRA will be available to the regions in two tranches: The \$771 million made available directly to regions under the act, and the \$835 million that flows through the State as a result of AB 3X-20. Although at this time we expect that the State will be able to meet the ARRA deadline of 50 percent obligation of its share of funds by June 30, 2009, we are requesting that, recipient agencies give priority to first obligating those funds that come to them through the State.
- **Disadvantaged Business Enterprises (DBE).** On March 4, 2009, FHWA approved Caltrans' DBE annual overall goal, which is based on implementation of a race-conscious and race-neutral program in equal proportions. This applies to all local agencies awarding federal-aid contracts after June 2, 2009. It is extremely important that all project work funded through ARRA meet the 13.5 percent goal for DBE participation and that local agencies attempt to modify their procedures and contract specifications to accommodate this goal as soon as possible. We would strongly encourage earlier compliance in this requirement, if at all feasible, so that the maximum benefit of DBE involvement in ARRA funding can be achieved.

- **Buy America and Prevailing Wage Requirements.** These provisions apply to all projects funded through ARRA. This will also apply to projects previously exempt from the Prevailing Wage requirement under normal federal-aid funding, such as safety, highway bridges on local streets and roads, and rural minor collectors.
- **ARRA Reporting Requirements.** States and other recipients of ARRA funds are required to periodically report on the status of their ARRA-funded projects. This includes local governments, metropolitan planning organizations, transit agencies, regional transportation planning agencies, and their contractors. FHWA is requiring recipients to report monthly on the funding and job creation status of each project. Caltrans is working to incorporate an automated reporting system as part of its Recovery Web site. In the meantime, we are asking you to use the spreadsheet formats that will soon be available through the Caltrans Recovery Web site at www.dot.ca.gov/recovery.
- **Transportation Enhancement Activity Program (TEA) Funding.** ARRA sets aside 3 percent of the funds, approximately \$77 million, for projects eligible for funding under the TEA program. AB3X-20 allocates 67.5 percent of the TEA set-aside funds to regions. It also establishes priorities for selecting TEA-funded projects that are consistent with the provisions of last year's Senate Bill 286. Priorities are first given to projects employing community or State conservation corps, then to bicycle and pedestrian activities, and finally to all other TEA-eligible projects.

The oversight and reporting requirements for the projects funded through ARRA are extensive, and we anticipate the increased cost to Caltrans of meeting them to be approximately \$13.9 million. ARRA also provides that oversight expenses are an eligible cost for the use of these stimulus dollars. In addition, State law allows for payment of oversight and administrative costs. Therefore, under the provisions of California Streets and Highways Code sections 182.6 and 182.7, we will be asking the California Transportation Commission to set aside \$8.175 million dollars, or 62.5 percent of the estimated costs, of the ARRA funds being allocated to the regions (a total of \$1.606 billion) for the purpose of defraying the administrative costs associated with implementation of ARRA. Caltrans will absorb the 37.5 percent of administrative costs associated with its proportional share of the ARRA funds.

Local agency representatives, including the League of California Cities and the California State Association of Counties have been involved in the initial discussions, drafts, and meetings that occurred during the past three months to develop the language that has culminated in AB3X-20. One key milestone that allowed the State to move forward with AB3X-20 is contained in Section 2423 (d), which describes the legislative intent that at least 40 percent of the regionally apportioned funds be available for suballocation to cities and counties. This provision was discussed at length, and in the end, this language is reflective of a very significant agreement among our State's stakeholders. I encourage all regional agencies to allocate their funds in full recognition of the needs of local entities and of this legislative intent and the spirit of the agreement that created it.

«Address_Title» «First_Name» «Last_Name»

March 30, 2009

Page 4

ARRA is a multifaceted bill that sets a goal of creating jobs and stimulating the economy. Providing funding for transportation programs and projects is just one component of the many strategies and programs within the bill. Many agencies are involved in implementation of ARRA at the local, regional, and State level. In addition, the State has implemented its own economic stimulus actions as part of the most recent budget. It is clear that the best way for California to realize the full potential of ARRA, as well as its own economic recovery efforts, is for each agency to approach the bill implementation with an understanding of the functions and responsibilities of its partners.

In recognition of the need for a comprehensive statewide economic development strategy, Governor Schwarzenegger has tasked Business, Transportation and Housing Agency (BTH) Secretary Dale E. Bonner with coordinating the Administration's economic development efforts. The BTH Economic Development Work Plan is available for your review on BTH's Web site at www.bth.ca.gov.

Two of the priority objectives identified in the Work Plan are to develop local and regional economic development strategies throughout the State and to support local and regional economic development efforts.

You recently received Secretary Bonner's request and suggested guidelines for developing regional economic development work plans that identify specific actions we can take together to preserve and expand our jobs base, help communities and businesses survive the global financial crisis, and lay the foundation for economic recovery and sustained growth. (see link to "Regional Economic Recovery Work Plans" at www.bth.ca.gov.) The emphasis on local and regional strategies reflects our commitment to create an environment where all levels of government collaborate to integrate their respective strategies. By working together, we can achieve a synergy that will maximize the job creation and economic development potential of ARRA, and I ask that you participate to the maximum extent possible in the process.

ARRA and AB 3X-20 present a unique opportunity for all of us. I believe that many of the features of ARRA and the lessons learned from it will become key components of the next transportation authorization bill. Not only are these pieces of legislation our best hope for reversing an unprecedented economic crisis, but they are also an opportunity to demonstrate to Congress the success California can achieve when given the flexibility to apply its transportation funds with a maximum level of discretion. We have testified before our State Legislature that once we have been given this flexibility to implement ARRA, we could move more quickly to expedite projects that will help to end this economic crisis. I invite you to work with me to demonstrate that our success on implementing ARRA is a model for the best of what can be achieved.

Finally, I expect that Congress take up the transportation authorization bill within the next few months. We have developed our Consensus on Federal Transportation Authorization (see attached document) to send a message of State unity on key principles to our

«Address_Title» «First_Name» «Last_Name»

March 30, 2009

Page 5

congressional delegation. I urge you to support our consensus effort and to send me your agency's official endorsement of this document if you have not already done so.

Sincerely,

WILL KEMPTON

Director

c: Dale E. Bonner, Secretary, Business, Transportation and Housing Agency
Walter C. Waidelich, Jr., Division Administrator, Federal Highway Administration,
Region IX
Andre Boutros, Executive Interim Director, California Transportation Commission
Paul McIntosh, Executive Director, California State Association of Counties
Chris McKenzie, Executive Director, League of California Cities
Rusty Selix, Executive Director, California Association of Council of Governments

Attachment: California Consensus on Federal Transportation Authorization for 2009