



A New Era in Transportation

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Intro

Thank you for that warm introduction. It is great for me to be with you today to give you a Washington update. Specifically I want to focus on the federal highway program.

Before beginning, I want to recognize Steve Hackworth with D&J Construction who is NAPA's State Director and represents Louisiana on NAPA's Board for Directors. The Board establishes NAPA's budget and policy direction in the legislative, marketing, environmental and engineering areas. I also want to commend Don Weathers and his fine work representing the members of the Louisiana Asphalt Pavement Association. NAPA strongly values its relationship with Don and the members of the Louisiana State Asphalt Pavement Association.

Normally when I give a presentation I use fancy slides with lots of charts and interesting pictures. I would focus on highway funding levels and make predictions on impacts to our industry and your business. I am not going to do that today. You don't need fancy charts showing revenues coming into the Highway Trust Fund support only about half of current spending on highways. You already know that, hopefully.

After coming off the Transportation Construction Coalition's Legislative Fly-In last week, I have come to the conclusion that we need to have a frank talk about where this program is heading, how it will impact your bottom-line, and what you should do about it. Whether you like it or not, change is on the way and it will impact your businesses in very real ways. As Jim Weeks, our most recent past NAPA Chairman, wrote in HMAT Magazine last January, "Those of us who embrace the change will survive and prosper. Those of us who don't, will not."

The asphalt pavement industry has benefited greatly over the last 50 years in large part due to the stability of the Highway Trust Fund and the concept that it was a user-fee, the federal excise tax on gasoline and diesel paid by the users of the system, which provided

the funding for the construction and maintenance of the highway system. But this federal program, this user-fee model that we have grown accustomed to, is under great stress right now. We are fundamentally in a different place now than we were even just a few short years ago.

The current highway program has been operating under short-term extensions since SAFETEA-LU expired in September 2009. We have stabilized the highway program for 2010 thanks to Congress enacting the Hire Act last March which extended the Highway program through December 2010, transferred \$19 billion into the Highway Trust Fund, and restored highway contract authority to the states. Where we go from here is important to your businesses and our industry.

I know some of the companies and state DOT's are beginning to plan now for the 2011 construction season. I am curious to know what assumptions they are using with respect to federal funding supporting state DOT highway programs. I am reminded of a Russian proverb that may help in assessing exactly where we are right now. It goes something like this: "It's not as good as last year, but it's better than next year."

A long time ago the former Executive Director for AASHTO, Frank Francois, told me how to look at these transportation reauthorization bills. And he repeated this often when he spoke. He said, "Jay these bills are about three things: money, money, and money." Frank went on to explain that it was about how much money, who got to spend the money, and what can the money be spent on.

I think Frank's insightfulness can be applied today which is why I would like to organize my presentation around these central questions regarding reauthorization of the next surface transportation bill: What can the funding be spent on? Who controls the funding? And of course: How much funding?

What can the funding be spent on?

Let's start with the question, "What can the funding be spent on?" Well here we are 8 months since the first of five extensions have been enacted and we still do not have a reauthorization proposal from the Administration. They have promised "principles" to the Congress but even that has been delayed.

Senator Boxer - the chair of the Senate Environment and Public Works Committee - is preparing a bill to release in September, two months before the elections. Chances of that bill being enacted, or any transportation bill being enacted this year is zero. Some surmise that the Administration and Sen. Boxer would actually like the climate change bill to be enacted before the transportation reauthorization bill.

"Why?" you might ask.

If you want to enact transformative transportation policy, what better way to do this than with a climate change bill. The climate legislation would require huge reductions in greenhouse gas emissions in the transportation sector and mandate states and local

governments prepare transportation plans to achieve such reductions. So in putting together what transportation projects to put forward and fund, states would have to get approval from EPA for these projects before Federal-aid highway funds could be used.

So reducing greenhouse gas emissions becomes the paramount objective in transportation planning. This would be set forth in a climate bill, followed by the transportation bill that would have to be in alignment with the new environmental law. Has this ever been done before?

Well actually yes. In 1990 Congress enacted the Clean Air Act Amendments that revamped the planning process for the consideration of transportation projects. New federal objectives were put in place to reduce nox, sox and ozone. State transportation plans had to reduce air emissions and states and counties in so-called “non-conformity” risked losing federal highway funds if their air quality did not comply with Federal law.

On the heels of enacting the Clean Air Act Amendments which prescribed the process for determining what projects may be included in transportation plans, ISTEA in 1991 took shape. On the Senate side, Senator Moynihan of New York and his staff argued that the era of constructing the Interstate Highway System was over. The Interstate Highway System was nearing completion and the transportation program in their view needed a complete overhaul.

They gave more local control over how the funds would be spent to newly empowered Metropolitan Planning Organizations and they created new programs and new set asides for urban oriented projects, code for projects other than highways. New criteria and flexibility were also established to ensure alternative modes of transportation would be considered and eligible for funding.

It is important to point out that the same staff that helped Senator Moynihan draft ISTEA now occupies the top posts at the US Department of Transportation. I guarantee you the people drafting the next bill will not make expanding the Interstate Highway System a top priority. Hell, it’s not a priority at all. It’s about livability, sustainability, mode neutrality, reducing greenhouse gas emissions, reducing energy consumption, and reducing single-occupancy vehicles.

If you have been following what Secretary LaHood has been saying, increasing capacity to reduce congestion is not an administration objective. Instead, it’s about high-speed rail, walking, and biking. “This is what the people want,” he will tell you. The Department of Transportation and the Department of Housing and Urban Development are working together to promote livability, or the idea that people should live and work near transit oriented development and federal policy should promote this objective by the way in which the Department of Transportation allocates funding.

Chairman Oberstar’s draft \$450 billion Surface Transportation Authorization Act is aligned with these objectives. The focus on highways is to bring the system up to a state of good repair with a new Critical Asset Investment program. I believe this program

would have very large asphalt pavement intensities as the Federal highway program shifts to an overlay program. But again, the bill's top transportation objectives are to reduce greenhouse gas emissions and single occupancy vehicles. And the Freight Capacity Improvement Program would also have to meet this same test. So between a rail project and a highway project, which will get built if the goal is to reduce greenhouse gas emissions?

Finally, the Oberstar bill also establishes an Office of Livability within DOT to advance transit, biking, walking and encourage "Comprehensive Street Design Projects." This indeed is not your father's bill. My fear is that we risk underestimating the power of this so-called "livability" movement just as the transportation construction industry underestimated the power of the emerging "smart growth" movement that helped to change the highway programs in 1990 and 1991 when the Clean Air Act Amendments and ISTEA were enacted into law.

Who Spends the Money?

Let's focus now on the question: "Who spends the money?" It is very important to understand that who controls the funding really dictates what projects get built. Historically, the federal – state relationship has been a partnership whereby the federal government provides 80 or 90 percent of the funding for certain roads, highways and bridges that are owned by the state. The state controls how those funds get spent with Federal approval.

One of the chief objectives of the environmental community as represented by "Transportation for America" or "T4America," is to take the control of funding out of the hands of State DOT's and place the funding directly into Metropolitan Planning Organizations and Rural Planning Organizations.

ISTEA gave MPO's a say in what type of projects are built, but the final decision was still left to "highway-centric" state transportation departments who had ultimate authority in what projects to fund and advance.

If your goal is to spend more on transit, biking and walking – and less on highways- how likely are you to achieve your objective if the funding remained in control of state DOT's whose top priority is to build and maintain highways?

This is why a top policy objective of T4America and other environmental groups is to give Federal highway dollars directly to MPO's in urban areas and grant Rural Planning Organizations more say on how highway funds are spent outside the cities.

Chairman Oberstar's bill sets up a very robust Federal grant program for MPO's and RPO's and establishes new goals: reduce congestion, maximize mobility, improve sustainability and promote livability. State DOT's would have less of a say in how the programmed funding would be allocated. You may even be entering into contracts with your local MPO. Do you know who they are?

We should be very concerned with proposals that add new layers of bureaucracy and decision-making to the project selection and delivery process.

Another development you should pay close attention to is what the Administration would like to do to advance their policy objectives of reducing greenhouse gas emissions and single-occupancy vehicles. Administration officials have said they would like to have a huge discretionary pot of money from which to award transportation projects on a competitive basis. They call it a “race to the top” where states and local governments would apply for grants for projects that achieve these national objectives. Officials at the US DOT would review project submissions and award grants to those projects they find to be the best in their view.

Look at the TIGER Grant program. That is exactly what I have just described. Congress provided \$1.5 billion in the economic stimulus bill for this program. The DOT received way more applications than the program could support. In this last round TIGER grants went mostly to freight rail projects and very little to highways. Congress has provided another \$600 million in the last transportation appropriations bill for this program. And the Kerry-Lieberman Climate Bill provides billions for DOT to award under the TIGER grant program. This program has political legs and bears watching.

I don't know about you but I get a little uncomfortable with a Washington knows best doctrine in allocating highway funds to the states.

So to summarize, transportation projects that reduce greenhouse gas emissions and single occupancy vehicles becomes a top federal priority and MPO's and RPO's would be empowered to fund projects and the US DOT would award grants to achieve these objectives.

How much money?

So let's talk about the third question: "How much money?" I saved the best for last. In an era of growing budget deficits and antigovernment fervor, how and when will the Congress grow the revenue stream to fund a larger federal transportation program?

My career in asphalt did not start in the asphalt industry. It actually started in 1985 when I worked for a member of Congress in his San Diego District office. In March of 1987, I moved to Washington. That same weekend, President Reagan vetoed an \$87.5 billion highway bill as a "budget-busting" example of "pork-barrel politics." It had 121 earmarks projects that the President found unacceptable. The House and Senate overrode the President's veto. 13 Republican Senators voted to override the veto. Can you imagine that happening today?

When ISTEA was taking shape, I worked for a Congressman from Nashville, Tennessee, Bob Clement. Representative Clement requested \$300,000 to design a bike path – an asphalt bike path - in Williamson County. This was prior to the Subcommittee mark-up of ISTEA.

On the day of the subcommittee mark-up, this was the first opportunity we would have to see an actual copy of the bill. (We did not have the internet back then like we do today.) We went to the committee room, and the first thing we did was – what do you think – of course, we looked to see how much we obtained. We got \$1.3 million for the bike path \$300,000 to design it and \$1 million to build it. “Jiminy,” my boss said, “we didn’t ask for enough.” We could have requested more projects!” My boss was disappointed but he voted for the bill nevertheless.

It just goes to show that there was more than enough money to go around for earmarks and programs through the ISTEA and TEA-21 years. Federal highway funding was increasing in the beginning of the millennium at the same time states and local government easily made the match and the state/local highway and residential and commercial markets saw tremendous growth.

Annual production of asphalt mix peaked in 2005/2006 totaling about 525 million tons of HMA. And then came SAFETEA-LU. SAFETEA-LU enacted in 2005 was really the turning point and can help us understand where we are today.

George Bush was president, Don Young was Chairman of the House Transportation Committee, and Jim Inhofe chaired the Senate Environment and Public Works Committee. The Interstate Highway System was completed. The environmental groups were frustrated because they knew they would not get a transformative bill with Bush-Young-Inhofe at the helm. There was no place for them to go.

We certainly supported Chairman Young’s call for a large increase in highway funding, but the administration did not support him fearing the only way that was going to happen was a gas tax increase. The administration was dead set against it. Sound familiar?

So to make a long story short, President Bush drew a line in the sand, he said he would veto any bill over \$256 billion. Young had a problem, how do you placate all the requests for projects and fund new programs, and at the same time fund existing programs?

So what they did is calculate how much the Highway Trust Fund would support based on economic assumption of how much revenue would flow into the Fund. Then they would shoehorn in all their priorities into a fiscally constrained bill. In order to meet Bush’s demand that the bill not exceed his line-in-the-sand budget, Congress included a nearly \$9 billion rescission of the Federal-aid highway program on the last day of the last fiscal year of SAFTEA-LU.

From a fiscal perspective, SAFETEA-LU has led to the unraveling of the user-fee linked concept and the fiscal stability the Federal-aid Highway Program enjoyed for over 50 years. First, Congress estimated wrong when the balance in the Highway Trust Fund would dry up. They were hoping that there would be enough revenues to support SAFETEA-LU’s lousy funding levels through 2009. Unfortunately, the Highway Trust

Fund needed two bailouts totaling \$15 billion just to get through the SAFETEA-LU years.

Second, the rescissions of contract authority authorized in SAFETEA-LU and previous appropriations bills have hindered states ability to plan multi-year projects such as bridges and interchanges. The rescissions demonstrated that Congress can give states funding on one hand and with the other take it away. Where is the certainty in that?

The other major damaging element to SAFETEA-LU was the projects. The Bridge to Nowhere still reigns today as the poster child of everything that is wrong about earmarking, Congress and the Federal government.

Many members of Congress ran against the Bridge to Nowhere. Senator John McCain made it a rallying cry in his Presidential campaign. It gave politicians a chance to run against government and talk about the evils of government. In other words, the earmarks in SAFETEA-LU have helped to create a toxic political environment from which a new, bigger bill is supposed to emerge.

So where are we today with funding?

Let's start with the asphalt pavement industry. You may have done ok the last couple of years. Louisiana benefited from the extra federal funds that poured in after Hurricane Katrina. The stimulus funding certainly helped paper over the downturn in some of the other markets.

The industry in general experienced liquid asphalt price and supply shock in 2007 which lead to a reduction in tons as owners on fixed budgets paved less. The downturn in 2008 and 2009 were purely economic as the housing boom went bust and the commercial markets tanked even further. Many companies that performed only commercial or residential work are now bidding on highway work resulting in ever tightening margins and increased risk for contractors.

The stimulus bill enacted in February 2009 resulted in more overlays and mill-n-fills for our industry. The program started slow with only about 20% of the \$26 billion allocated to the states actually spent at the end of 2009. The first quarter of 2010 was extremely wet but March was a great paving month and the second and third quarter should be very robust indeed thanks to stimulus funding. Stimulus funding should start receding in the 4th quarter and diminish altogether sometime in 2011.

Earlier this year Congress passed the Hire Act which helped stabilize the core Federal highway program for this year. It not only extended SAFETEA-LU programs though the end of the year, it restored state's contract authority and transferred \$19 billion into the Highway Trust Fund, thus ensuring states they would be fully reimbursed for Federal aid highway projects for now.

But if you are a company CEO thinking about doing a plant upgrade or bringing more crews back, you are probably more than a little bit cautious. State and local governments are facing record budget deficits and are slashing spending including highway programs. Residential construction may be coming back but from such low levels, it's not enough to grow the HMA market in any substantial way. Commercial work is not expected to come back this year and maybe even stay that way in 2011.

And contractors face the same questions about the Federal highway program as state DOT's. What will federal highway funding levels be in 2011? Will the highway program be extended after December 31? How long will the next extension be? Will states get extra contract authority?

How do you budget for capital expenses and complex projects faced with this uncertainty?

I started this section of the speech asking how and when the Congress will grow the revenue stream to fund a larger federal transportation program. Chairman Oberstar's \$450 billion proposal has about a \$150 billion hole in it. Actually its \$200 billion when you count high-speed rail. The Highway Trust Fund is taking in about \$35 billion a year and spending out about \$50 billion. If no new revenues are found, or Congress decides not to fill the gap with general funds, the Highway Program spending level would have been reduced to about \$20 billion in 2012.

So let's look at three serious options before Congress on this legislation: find new revenues, use general funds to finance the program, or reducing highway program spending.

First new revenues. The chances for a gas tax increase, indexing, or instituting a VMT tax in the short run is zero. The 24 hour news cycle and endless focus on politics rather than policy in Washington has made it extremely difficult for individual Members of Congress to support a gas tax. Now you may say that polling suggests Americans are willing to pay a few pennies more to improve their infrastructure. But as Secretary LaHood told me last week, you don't see any politicians running on the issue of raising a gas tax.

The gas tax was last raised in 1993. The following year, the greatest number of Republican freshmen, 54 House members and 8 Senators were voted into office. The Democrats lost their majority in the House for the first time since 1954. Sadly, it is this fact that is driving the policy discussion on increasing the gas tax in Washington.

In the meetings we had with members of Congress during the TCC legislative fly-in, except for a few retiring members, it was very difficult to find any member who was willing to walk the plank on a vote to raise the gas tax.

Many members of Congress will say they fully support funding for highways, and even support a bigger transportation program. The discussion ends when it comes to paying for

it. The Administration is the worst offender because they go around the country telling the American people that we need to build high-speed rail systems in 13 corridors across the country, and that the Federal government should spend more on street cars and bike paths. Yet they won't lift a finger to help advance a funding source to pay for any of these new programs. So the gas tax option is dead for now.

What about general fund revenue to support the program? Well that is what we are doing now. Some \$35 billion in general fund revenue has been pumped into the Highway Trust Fund and this does not count the \$27.5 billion from the economic stimulus bill which was funded outside the Highway Trust Fund. No one can argue with a straight face today that this is a user-fee based program. At risk now are the funding guarantees and firewalls as well as a states ability to budget for projects over multiple years.

Federal highway funding levels for the foreseeable future will now be determined by the annual appropriation bill, not by the 6-year transportation authorization bill. These appropriation bills are frequently late in being enacted and the highway programs will now compete for funding with veterans, education, and environmental programs, to name just a few. I can think of one transportation program that is funded this way. Its feast or famine year by year with wild swings in the amount Congress funds this program. And you know what, the highway program could look a lot like this program. It's called Amtrak.

With the challenges of general fund revenue paying for this program and the lack of flexibility states would have in budgeting for projects, the transportation construction industry faces a very uncertain market. For years we have relied on the Highway Trust Fund to provide a stable and increasing amount of highway funding annually, even during recessionary periods. That certainty is all but erased now.

Now highway funding will be subject to the acrimonious debate on Capitol Hill. It was only last February that for the very first time since the Highway Trust Fund was established, the Federal Highway Administration shutdown for a few days while Senator Bunning held up the extension bill. All payments to states and contractors stopped for several days while Congress debated the motion. Highway funding from now on is subject to this type of disruption. How do you plan for that?

So that brings us to the last option: aligning the Federal Highway Program spending to the actual revenues into the Highway Trust Fund. That would be responsible government and there are many in both parties who believe that we need to do this across-the-board on all federal programs. The President has established a deficit reduction commission that will issue a report in December on how to do this.

Many of you believe Congress spends too much and taxes too much. We need to reduce both. Many candidates running for office cite how poorly government performs. Government can't do anything right or we need to redefine what government is doing! With the next Congress likely to be more GOP leaning, what does that mean for enacting a reauthorization bill next year with increased funding for highways if the top priority is

deficit reduction and cutting taxes?

Congressional sessions are always measured by some huge issue, like health care. I think the next session of Congress will focus on deficit reduction. If you were to take deficit reduction policy and apply it to the surface transportation programs, one outcome could be a smaller Federal highway program. The argument would be made that we simply cannot afford to do all things for all people, like investing in highways, transit and high speed rail. The program would need to shrink to better align with current revenues.

Some have even suggested that the only constitutionally-based federal role would be the maintenance of the Interstate Highway System. And right now, that is all the 18.3 cent federal gas tax can afford. All other transportation needs would go back to the states to address.

Of course this is not acceptable to NAPA or any of the other stakeholders groups we work with on this issue.

It is clear that we need a two-step legislative process if we are to get a transportation bill reauthorized. We need to secure the additional funding and then draft the policy bill that is aligned with the funding. And right now we see that funding coming from the climate change bill.

On May 12, Senators Kerri and Lieberman introduced a climate change bill that probably enjoys the most support in the Congress of all the proposals put out there. Whether this legislation becomes law or not this year, is not the point. The debate will continue into next year and this will be the model for climate change legislation if Congress ever passes a bill.

The utility and industry sectors are put under a cap and trade system. At the behest of big oil, the transportation sector would be treated differently. A carbon tax passed through at the rack and starting at \$12 a metric ton would be assessed on transportation users. We estimate the tax increase on fuels to start at 11 cents per gallon in 2013 resulting in at least \$20 billion being raised through higher fuel prices.

The question is “What is to become of these revenues?” We believe all of these revenues from the higher fuel taxes must be placed in the Highway Trust Fund. We need these revenues if we are ever to write a transportation bill, especially one that is going to support bringing the Interstates up to a state of good repair and beyond. Do you think Congress will pass a gas tax increase to pay for a highway bill on top of an 11 cent increase in the gas tax in year 2013 and increasing at least 3% a year thereafter? No way. We get one bite at the apple and this is it.

Regrettably, the bill provides only \$2.5 billion per year for the Highway Trust Fund, the rest being diverted to placate the coal and utility interests and offset higher energy costs for consumers. Senator Kerry when pressed on this point will tell you that the purpose of

the climate legislation is to reduce greenhouse gases, not fund more highway construction.

We cannot afford to lose this debate. We are at a defining moment for our industry as we debate the future of transportation revenues in legislation before the Congress.

How much money will there be for transportation? Who can spend the money? What can the money be spent on? These indeed are the questions in which you must focus on in reauthorization if you are to accurately predict the future of your business.

What can you do?

So the question now becomes what can you do? Well first, as we enter a period of uncertainty and potential volatility in Federal Highway Program funding, you will want to keep informed. For NAPA members, the best way is check NAPA's government affairs web site at www.hotmix.org. I recommend you check back every week and see what we are posting. Everything I do is designed to keep our members and industry fully informed so you can plan your business accordingly.

Second, continue to support NAPA. We are your voice and ears on Capitol Hill. Nobody knows our industry in Washington and before Congress like we do at NAPA. Of course the exceptions to this are the companies that NAPA represents. But unless you are going to be camped out 24-7 in Washington, NAPA provides this essential resource. We can't do it without your support and technology know how.

Of course NAPA does so much more, but government relations in Washington is a top NAPA priority.

Third, get to know your members of Congress. Invite them to your plant for a tour. Ask your member of Congress what they are looking for in the next transportation bill and their willingness to support additional revenues into the program. Are you satisfied with their answer? Let them know what you think. You vote!

Host a fundraiser. Attend a town hall meeting. Contact me for questions you can ask your member of Congress and fact sheets to use for these events.

Participate in the fly-in. Respond to the grassroots alerts. Get your employees to weigh in too. The transportation construction industry is terribly outgunned in the grassroots department. The key to success on grassroots is that you have to care enough to participate and then do it. The livability crowd cares. Believe me. They are all over Capitol Hill.

I appreciate all those in this room who have done any of these things I have just mentioned. But we can do better. A lot better. I hope you will stand with me and NAPA as we take on the fight to pass a multi-year transportation bill with increased funding for highways. You want that. NAPA wants that. Our industry wants that. Our country

needs it for its future competitiveness and high standard of living of our children and grandchildren.

For the sake of our country and our future, join with NAPA in this fight for a better America.

Thank you.