



# The California Trade Coalition

*A Coalition Working to Keep California Competitive in a Global Economy*

American Chemistry  
Council

APL Ltd.

Associated General  
Contractors of California

California Association  
of Port Authorities

California Business  
Properties Association

California Business  
Roundtable

California Chamber  
of Commerce

California Manufacturers  
& Technology Association

California Nevada  
Cement  
Promotion Council

California Railroad Industry

California Retailers  
Association

Consumer Electronics  
Association

Grocery Manufacturers  
of America

Industrial Environmental  
Association

International Council  
of Cruise Lines

International Council  
of Shopping Centers

Matson Navigation  
Company

Maersk Inc.

Pacific Merchant  
Shipping Association

Retail Industry Leaders  
Association

Society of the  
Plastics Industry

SSA Marine

Western Home  
Furnishings Association

January 10, 2005

Hon. Sunne Wright McPeak  
Secretary  
Business, Transportation & Housing Agency  
980 9<sup>th</sup> St., Suite 2450  
Sacramento, CA 95814

Dr. Alan Lloyd  
Secretary  
Environmental Protection Agency  
1001 I St.  
Sacramento, CA 95814

**RE: Goods Movement Action Plan – Phase II Progress Report**

Dear Secretaries McPeak and Lloyd:

The California Trade Coalition (CalTrade) is comprised of major trade-related businesses and organizations dedicated to keeping California competitive in the global economy. CalTrade represents the private sector industries and public sector infrastructure that serve as the gateway to our global economy, ultimately facilitating over \$360 billion in trade. Our state has 930,000 jobs, \$34 billion in wages and benefits, and \$3.6 billion in tax revenues relying on the health of our International Maritime Trade sector.

As we have expressed in earlier correspondence to you and the GMAP Integrating Work Group, CalTrade applauds your collective efforts to retain the benefits of international trade, grow our infrastructure to facilitate even more trade in the years to come, and at the same time grow in environmentally-conscious ways by declaring now as the time for California to invest in the future. We share your concerns that the lack of state and federal investments in our transportation infrastructure will ultimately limit international trade, reduce job opportunities in the logistics industry, and hurt California's global economic competitiveness.

As a Coalition we would direct you to our letter regarding Transportation Infrastructure Improvements of December 9, 2005, which was addressed to Governor Schwarzenegger and legislative leadership with copies to both of you. A copy of this letter is attached to our comments herein for the benefit of the public, GMAP participants, and the members of the Integrated Working Group.

CalTrade shares the Administration's policy set out in January of 2005 which embraces the dual goals of growth and environmental impact reduction; we agree that these are achievable and not mutually exclusive propositions.

We are pleased that Phase II of the Report restates this policy as a guiding principle prior to its listing of the working principles adopted by the Integrated Working Group, as was suggested by CalTrade in earlier correspondence regarding GMAP. Given the dynamic economics and competitive business environment of international and interstate trade, the number of complex legal and regulatory restrictions and jurisdictions involved, as well as the diversity of environmental and public health challenges facing California, CalTrade is pleased that the Administration believes, as we do, that there is a right way and a wrong way to approach the facilitation of freight mobility in the State. The policy you have adopted clearly would imply that the wrong way to proceed is any set of outcomes which creates cargo diversion or, because of questionable legal authority, spurs litigation from the international trade community rather than cooperation and growth.

In addition, with regards to specific sections of Phase II, we would offer the following comments:

- Section III-B. While we generally agree with your comments and guidelines for criteria for selection of projects and actions we cannot help but point out that your example of grade separations does not actually meet the guidelines and criteria you have outlined and serves as a poor example. Grade separations as a general rule do not improve velocity through the speed of goods delivery as rail routes have the right of way, do not increase throughput if the rail is existing rail, does not impact rail capacity in any meaningful way, has minimal reliability benefits (as the railroads maintain very high at-grade crossing safety records), is a segregation of modes that does not increase connectivity and has minimal congestion benefits for those moving goods. We would point out that grade separations do reduce impacts on the community and retain value from that perspective. Each of the benefits mentioned in the example are principally reductions in impact on the community as they are benefits to local residents and automobile traffic, even though they were not mentioned in the grade crossing example as a community impact reduction.
- Table V-1. More attention should be directed to using state bond proceeds to leverage funds from federal sources. For example, the newly enacted federal SAFETEA-LU transportation bill contains a provision authorizing \$15.0 billion in Private Activity Bonds (“PABs”) (see Section 11-1143). The state bond proceeds could be used to access/leverage this new federal transportation-funding source. Without such authorization, California will be unable to access the SAFETEA-LU provisions containing the \$15 billion program for PABs for highways and surface freight transfer facilities Section 1143 of Title XI of the Act creates a new category of exempt facilities for which private activity bonds may be issued -- “qualified highway or surface freight transfer facilities.” This new category includes any surface transportation project receiving Title 23 funds and facilities for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to such transfers). According to CalTrans: “With a national limit of \$15 billion and no ceiling on the amount of PABs issued per state under these provisions, states with the statutory authority to enter into [Public Private Partnerships (PPPs)] may find these tax-exempt financings very attractive and quickly utilize the available limit under this

provision. If we do not create the statutory authority for California to allow for PPPs, we may find ourselves on the outside looking in.”

- Table V-3. CalTrade takes issue with the inclusion of “freight facility fees” included in this report. We would suggest that if you intend to include user fees as a potential funding source, which may be appropriate, you list those that are executed by contract and federally-approved tariff separately from other public local funding sources as it implies that these can be imposed and assessed “directly or indirectly” by local governments. Moreover, the examples that are used misconstrue the fees already in use and miss the largest source of true user fees already in place – the ports. As we have mentioned in previous correspondence, any imposition of any fee on containers in interstate and foreign trade, and not imposed on the users of the infrastructure sought to be developed, is a tax that violates federal law, international law, and the US Constitution. It will be thoroughly and successfully litigated by members of the international trade community. The ports’ fees imposed through contract under approved federal tariffs and statutory authority granted explicitly by Congress should be listed as a funding source for port projects in a new table. Moreover, the two examples used should be refined to better reflect their imposition and to alleviate the possible misunderstanding of the program. First, the Alameda Corridor is enforced through agreements and private contracts between the Ports, railroads, marine terminals and those entities that are ultimately charged fees. The use of the term “container fee” should not be used out of this context and CalTrade feels that the explanation as included here misconstrues the true nature of what is actually a penalty charged against a container if a shipper purposefully attempts to avoid the imposition of an Alameda Corridor user fee and agrees to pay such under private contract. Second, any discussion of the fee charged under the OffPeak program administered by PierPass should make reference to the fact that it is a tariff item approved by the Federal Maritime Commission.

Thank you for your consideration of CalTrade’s comments on Phase II of the Goods Movement Action Plan. Again, your commitment to the betterment of California’s transportation infrastructure is laudable and we stand ready to assist you with our collective expertise.

Sincerely,

***The California Trade Coalition***