

June 21, 2011

FOIA Officer
Office of the Secretary of Transportation
Department of Transportation
1200 New Jersey Ave., SE
W94-122
Washington, DC 20590

Re: Freedom of Information Act Request

Dear Sir/Madam:

On behalf of the Competitive Enterprise Institute (CEI), a non-profit 501(c)(3) public interest organization with substantial media and publication functions, and pursuant to the Freedom of Information Act, 5 U.S.C. §552 *et seq.* (FOIA) and implementing regulation, please provide us, within twenty (20) days, copies of all records, documents, internal and external written communications¹ and other relevant covered material (“records”) in the Department of Transportation, Office of the Secretary of Transportation’s (OST) possession and which meet the following descriptions:

I. Records Relating to Congressional Liaison

1. Any and all written correspondence or other records sent or received by the Office of the Secretary of Transportation (OST), to or from or which cite, name or reference Rep. Dennis A. Cardoza, his office, staff, and/or California’s 18th Congressional District; and
2. Any and all written correspondence or other communications sent or received by OST, to or from or which cite, name or reference Rep. James M. Costa, his office, staff, and/or California’s 20th Congressional District.

II. Records Relating to the Central Valley High-Speed Rail Corridor

1. Any and all written correspondence or other records produced, held, sent or received by OST which cite, name or reference the proposed high-speed rail segment (Central Valley HSR Corridor) between Borden, Madera County, California, and Corcoran, Kings County, California, *and*:
 - a. Gov. Arnold A. Schwarzenegger;
 - b. California High Speed Rail Authority President Roelof van Ark;
 - c. Fresno, California, Mayor Ashley Swearengin;
 - d. Secretary of Transportation Raymond H. LaHood; *or*
 - e. Federal Railroad Administration Administrator Joseph C. Szabo.

¹ “Written communications” for purposes of this Request means emails, letters, memoranda and logs or such similar record for documenting telephone calls made or received.

Scope of Request: Offices and Period Covered

The above Requests are *not* limited to correspondence to or from OST's offices of congressional, governmental or intergovernmental affairs, but to, from or in the possession of the above-cited offices.

Documents covered by each element of this Request are expected to be located in the offices of the individuals named above or their assistant(s). They will have been received or produced by relevant OST offices and/or otherwise dated over the approximate three-month period of September 1, 2010 to December 1, 2010, inclusive.

Please identify and inform us of all responsive or potentially responsive documents within the statutorily prescribed time, and the basis of any claimed exemptions or privilege and to which specific responsive or potentially responsive document(s) such objection applies.

Further, please inform us of the basis of any complete or partial denials or redactions. Specifically, if your office takes the position that any portion of the requested records is exempt from disclosure, we request that you provide us with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1972), with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA" pursuant to *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979), and "describ[ing] each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information." *King v. Department of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987).

In the event that some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested records. *See* 5 U.S.C. §552(b). If it is your position that a document contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed through the document. *Mead Data Central v. Department of the Air Force*, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemption in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please provide the documents in electronic form (except for documents that do not exist in electronic form), unless it would be cheaper to obtain paper copies. If the charge for this document will exceed \$100.00, then we request that your office waive charges other than duplication costs (and also waive duplication costs for the first 100 pages of copies) pursuant to 49 CFR §7.44(b)&(c).

We request this on the basis that CEI is a non-profit, tax-exempt, public-interest organization, with formal research, educational, and publication functions as part of its mission, and because release of these records will serve the public interest by contributing significantly to the public's understanding of government operations, public infrastructure projects, how taxpayer money is

spent, and how those conducting important research likely to influence public policy and regulatory decisions and public health were vetted or selected. This FOIA request is not for commercial use.²

CEI's interest in the documents springs from its efforts to educate the public, scholars, and state and federal regulators on matters of government operations, and especially regarding the American Recovery and Reinvestment Act and general investment in transportation projects and other public infrastructure programs.³ Both the general and policy-oriented public will benefit from the dissemination of the information requested, since CEI's professionals are widely published.

CEI publishes materials based upon its research via print and electronic media, as well as in newsletters to legislators, education professionals, and other interested parties.⁴ Those activities are in fulfillment of CEI's mission. The information received will be disseminated through one or more of the following: (a) newsletters; (b) opinion pieces in newspapers or magazines; (c) CEI's websites, which receive approximately 150,000 monthly visitors (appx. 125,000 unique);⁵ (d) in-house publications for public dissemination; (e) other electronic journals, including blogs to which our professionals contribute; (f) local and syndicated radio programs dedicated to discussing public policy; (g) to the extent that Congress or states engaged in relevant oversight or related legislative or judicial activities find that which is received noteworthy, it will become part of the public record on deliberations of the legislative branches of the federal and state governments on the relevant issues. CEI is regularly cited in newspapers,⁶ law reviews,⁷ and legal and scholarly publications.⁸

² Nor would it primarily further or advance any commercial interest. Also, CEI is not a trade association.

³ See, e.g., Marc Scribner, "The Limitations of Public-Private Partnerships: Recent Lessons from the Surface Transportation and Real Estate Sectors," Competitive Enterprise Institute: *Issue Analysis* No. 1, January 2011, <http://cei.org/issue-analysis/limitations-public-private-partnerships>; Scribner, "Stop pretending that it's high-speed rail," *Milwaukee Journal-Sentinel*, November 17, 2010; Scribner, "Tolls, More Freeways Would Improve Transport (LETTER)," *The Washington Times*, April 20, 2010.

⁴ See *EPIC v. DOD*, 241 F.Supp.2d 5 (D.D.C. 2003) (court ruled that the publisher of a bi-weekly electronic newsletter qualified as the media, entitling it to a waiver of fees on its FOIA request); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1181-82 (10th Cir. 2005) (fee waiver granted for group that "aims to place the information on the Internet"; "Congress intended the courts to liberally construe the fee waiver requests of noncommercial entities").

⁵ See, e.g., www.openmarket.org (one of several blogs operated by CEI providing daily coverage of legal and regulatory issues); www.globalwarming.org (another CEI blog).

⁶ See, e.g., Al Neuharth, "Why Bail Out Bosses Who Messed It Up," *USA Today*, Nov. 21, 2008, at 23A (quotation from Competitive Enterprise Institute) (available at 2008 WLNR 22235170); Bill Shea, "Agency Looks Beyond Criticism of Ads of GM Boasting About Repaid Loan," *Crain's Detroit Business*, May 17, 2010, at 3 (available at 2010 WLNR 10415253); Mona Charen, Creators Syndicate, "You Might Suppose That President Obama Has His Hands ...," *Bismarck Tribune*, June 10, 2009, at A8 (syndicated columnist quoted CEI's OpenMarket blog); Hal Davis, "Earth's Temperature Is Rising and So Is Debate About It," *Dayton Daily News*, April 22, 2006, at A6 (citing CEI's GlobalWarming.Org); *Washington Examiner*, August 14, 2008, pg. 24, "Think-Tanking" (reprinting relevant commentary from OpenMarket); Mark Landsbaum, "Blogwatch: Biofuel Follies," *Orange County Register*, Nov. 13, 2007 (citing OpenMarket) (available in Westlaw news database at 2007 WLNR 23059349); *Pittsburgh Tribune-Review*, "Best of the Blogs," Oct. 7, 2007 (citing OpenMarket) (available in Westlaw news database at 2007 WLNR 19666326).

⁷ See, e.g., Robert Hardaway, "The Great American Housing Bubble," 35 *University of Dayton Law Review* 33, 34 (2009) (quoting Hans Bader of Competitive Enterprise Institute regarding origins of the financial crisis that precipitated the TARP bailout program).

⁸ See, e.g., Bruce Yandle, "Bootleggers, Baptists, and the Global Warming Battle," 26 *Harvard Environmental Law Review* 177, 221 & fn. 272 (citing CEI's GlobalWarming.Org); Deepa Badrinarayana, "The Emerging Constitutional Challenge of Climate Change: India in Perspective," 19 *Fordham Environmental Law Review* 1, 22 & fn. 119 (2009) (same); Kim Diana Connolly, "Bridging the Divide: Examining the Role of the Public Trust in Protecting Coastal and

In the event of any appeal as appropriate and regardless of that outcome or your response to this fee waiver request, we request the search and document production proceed in the interim. (If there are any such charges, please provide an invoice for the time incurred and cost for each document for which more than \$15.00 is sought.)

As provided by FOIA, I look forward to hearing from you within twenty (20) days.

Sincerely,



Marc Scribner
Land-use and Transportation Policy Analyst
Center for Economic Freedom
Competitive Enterprise Institute
1899 L Street, N.W., 12th Floor
Washington, D.C. 20036
(202) 331-2761
mscribner@cei.org

Wetland Resources,” 15 *Southeastern Environmental Law Journal* 1, 15 & fn. 127 (2006) (same); David Vanderzwaag, *et al.*, “The Arctic Environmental Protection Strategy, Arctic Council, and Multilateral Environmental Initiatives,” 30 *Denver Journal of International Law and Policy* 131, 141 & fn. 79 (2002) (same); Bradley K. Krehely, “Government-Sponsored Enterprise: A Discussion of the Federal Subsidy of Fannie Mae and Freddie Mac,” 6 *North Carolina Banking Institute* 519, 527 (2002) (quoting Competitive Enterprise Institute about potential bailouts in the future).

June 21, 2011

FOIA Officer
Federal Railroad Administration
Department of Transportation
1200 New Jersey Ave., SE
W33-437
Washington, DC 20590

Re: Freedom of Information Act Request

Dear Sir/Madam:

On behalf of the Competitive Enterprise Institute (CEI), a non-profit 501(c)(3) public interest organization with substantial media and publication functions, and pursuant to the Freedom of Information Act, 5 U.S.C. §552 *et seq.* (FOIA) and implementing regulation, please provide us, within twenty (20) days, copies of all records, documents, internal and external written communications¹ and other relevant covered material (“records”) in the Federal Railroad Administration’s (FRA) possession and which meet the following descriptions:

I. Records Relating to Congressional Liaison

1. Any and all written correspondence or other records sent or received by the Federal Railroad Administration (FRA), to or from or which cite, name or reference Rep. Dennis A. Cardoza, his office, staff, and/or California’s 18th Congressional District; and
2. Any and all written correspondence or other communications sent or received by FRA, to or from or which cite, name or reference Rep. James M. Costa, his office, staff, and/or California’s 20th Congressional District.

II. Records Relating to the Central Valley High-Speed Rail Corridor

1. Any and all written correspondence or other records produced, held, sent or received by FRA which cite, name or reference the proposed high-speed rail segment (Central Valley HSR Corridor) between Borden, Madera County, California, and Corcoran, Kings County, California, *and*:
 - a. Gov. Arnold A. Schwarzenegger;
 - b. California High Speed Rail Authority President Roelof van Ark;
 - c. Fresno, California, Mayor Ashley Swearengin;
 - d. Secretary of Transportation Raymond H. LaHood; *or*
 - e. Federal Railroad Administration Administrator Joseph C. Szabo.

¹ “Written communications” for purposes of this Request means emails, letters, memoranda and logs or such similar record for documenting telephone calls made or received.

Scope of Request: Offices and Period Covered

The above Requests are *not* limited to correspondence to or from FRA's offices of congressional, governmental or intergovernmental affairs, but to, from or in the possession of the above-cited offices.

Documents covered by each element of this Request are expected to be located in the offices of the individuals named above or their assistant(s). They will have been received or produced by relevant FRA offices and/or otherwise dated over the approximate three-month period of September 1, 2010 to December 1, 2010, inclusive.

Please identify and inform us of all responsive or potentially responsive documents within the statutorily prescribed time, and the basis of any claimed exemptions or privilege and to which specific responsive or potentially responsive document(s) such objection applies.

Further, please inform us of the basis of any complete or partial denials or redactions. Specifically, if your office takes the position that any portion of the requested records is exempt from disclosure, we request that you provide us with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1972), with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA" pursuant to *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979), and "describ[ing] each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information." *King v. Department of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987).

In the event that some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested records. *See* 5 U.S.C. §552(b). If it is your position that a document contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed through the document. *Mead Data Central v. Department of the Air Force*, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemption in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please provide the documents in electronic form (except for documents that do not exist in electronic form), unless it would be cheaper to obtain paper copies. If the charge for this document will exceed \$100.00, then we request that your office waive charges other than duplication costs (and also waive duplication costs for the first 100 pages of copies) pursuant to 49 CFR §7.44(b)&(c).

We request this on the basis that CEI is a non-profit, tax-exempt, public-interest organization, with formal research, educational, and publication functions as part of its mission, and because release of these records will serve the public interest by contributing significantly to the public's understanding of government operations, public infrastructure projects, how taxpayer money is spent, and how those conducting important research likely to influence public policy and

regulatory decisions and public health were vetted or selected. This FOIA request is not for commercial use.²

CEI's interest in the documents springs from its efforts to educate the public, scholars, and state and federal regulators on matters of government operations, and especially regarding the American Recovery and Reinvestment Act and general investment in transportation projects and other public infrastructure programs.³ Both the general and policy-oriented public will benefit from the dissemination of the information requested, since CEI's professionals are widely published.

CEI publishes materials based upon its research via print and electronic media, as well as in newsletters to legislators, education professionals, and other interested parties.⁴ Those activities are in fulfillment of CEI's mission. The information received will be disseminated through one or more of the following: (a) newsletters; (b) opinion pieces in newspapers or magazines; (c) CEI's websites, which receive approximately 150,000 monthly visitors (appx. 125,000 unique);⁵ (d) in-house publications for public dissemination; (e) other electronic journals, including blogs to which our professionals contribute; (f) local and syndicated radio programs dedicated to discussing public policy; (g) to the extent that Congress or states engaged in relevant oversight or related legislative or judicial activities find that which is received noteworthy, it will become part of the public record on deliberations of the legislative branches of the federal and state governments on the relevant issues. CEI is regularly cited in newspapers,⁶ law reviews,⁷ and legal and scholarly publications.⁸

² Nor would it primarily further or advance any commercial interest. Also, CEI is not a trade association.

³ See, e.g., Marc Scribner, "The Limitations of Public-Private Partnerships: Recent Lessons from the Surface Transportation and Real Estate Sectors," Competitive Enterprise Institute: *Issue Analysis* No. 1, January 2011, <http://cei.org/issue-analysis/limitations-public-private-partnerships>; Scribner, "Stop pretending that it's high-speed rail," *Milwaukee Journal-Sentinel*, November 17, 2010; Scribner, "Tolls, More Freeways Would Improve Transport (LETTER)," *The Washington Times*, April 20, 2010.

⁴ See *EPIC v. DOD*, 241 F.Supp.2d 5 (D.D.C. 2003) (court ruled that the publisher of a bi-weekly electronic newsletter qualified as the media, entitling it to a waiver of fees on its FOIA request); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1181-82 (10th Cir. 2005) (fee waiver granted for group that "aims to place the information on the Internet"; "Congress intended the courts to liberally construe the fee waiver requests of noncommercial entities").

⁵ See, e.g., www.openmarket.org (one of several blogs operated by CEI providing daily coverage of legal and regulatory issues); www.globalwarming.org (another CEI blog).

⁶ See, e.g., Al Neuharth, "Why Bail Out Bosses Who Messed It Up," *USA Today*, Nov. 21, 2008, at 23A (quotation from Competitive Enterprise Institute) (available at 2008 WLNR 22235170); Bill Shea, "Agency Looks Beyond Criticism of Ads of GM Boasting About Repaid Loan," *Crain's Detroit Business*, May 17, 2010, at 3 (available at 2010 WLNR 10415253); Mona Charen, Creators Syndicate, "You Might Suppose That President Obama Has His Hands ...," *Bismarck Tribune*, June 10, 2009, at A8 (syndicated columnist quoted CEI's OpenMarket blog); Hal Davis, "Earth's Temperature Is Rising and So Is Debate About It," *Dayton Daily News*, April 22, 2006, at A6 (citing CEI's GlobalWarming.Org); *Washington Examiner*, August 14, 2008, pg. 24, "Think-Tanking" (reprinting relevant commentary from OpenMarket); Mark Landsbaum, "Blogwatch: Biofuel Follies," *Orange County Register*, Nov. 13, 2007 (citing OpenMarket) (available in Westlaw news database at 2007 WLNR 23059349); *Pittsburgh Tribune-Review*, "Best of the Blogs," Oct. 7, 2007 (citing OpenMarket) (available in Westlaw news database at 2007 WLNR 19666326).

⁷ See, e.g., Robert Hardaway, "The Great American Housing Bubble," 35 *University of Dayton Law Review* 33, 34 (2009) (quoting Hans Bader of Competitive Enterprise Institute regarding origins of the financial crisis that precipitated the TARP bailout program).

⁸ See, e.g., Bruce Yandle, "Bootleggers, Baptists, and the Global Warming Battle," 26 *Harvard Environmental Law Review* 177, 221 & fn. 272 (citing CEI's GlobalWarming.Org); Deepa Badrinarayana, "The Emerging Constitutional Challenge of Climate Change: India in Perspective," 19 *Fordham Environmental Law Review* 1, 22 & fn. 119 (2009) (same); Kim Diana Connolly, "Bridging the Divide: Examining the Role of the Public Trust in Protecting Coastal and Wetland Resources," 15 *Southeastern Environmental Law Journal* 1, 15 & fn. 127 (2006) (same); David Vanderzwaag, *et*

In the event of any appeal as appropriate and regardless of that outcome or your response to this fee waiver request, we request the search and document production proceed in the interim. (If there are any such charges, please provide an invoice for the time incurred and cost for each document for which more than \$15.00 is sought.)

As provided by FOIA, I look forward to hearing from you within twenty (20) days.

Sincerely,



Marc Scribner
Land-use and Transportation Policy Analyst
Center for Economic Freedom
Competitive Enterprise Institute
1899 L Street, N.W., 12th Floor
Washington, D.C. 20036
(202) 331-2761
mscribner@cei.org

al., "The Arctic Environmental Protection Strategy, Arctic Council, and Multilateral Environmental Initiatives," 30 *Denver Journal of International Law and Policy* 131, 141 & fn. 79 (2002) (same); Bradley K. Krehely, "Government-Sponsored Enterprise: A Discussion of the Federal Subsidy of Fannie Mae and Freddie Mac, 6 *North Carolina Banking Institute* 519, 527 (2002) (quoting Competitive Enterprise Institute about potential bailouts in the future).