The Real Estate Roundtable

January 11, 2018

President Donald J. Trump
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Trump:

As your Administration prepares to unveil a major infrastructure proposal, The Real Estate Roundtable offers our support for this vital initiative. A holistic infrastructure re-building effort will create American jobs and boost GDP – amplifying the pro-growth impacts from the new tax reform law.

America is in the midst of a "transportation revolution." As Millennials predominate the workforce and Baby Boomers retire from it, our citizens have heightened demands for safe and efficient highways, driverless vehicles, ridesharing services, rapid inter-city transit, and reliable power and Internet delivery. Infrastructure policies must respond to these changing demographics – and optimize the efficient movement of people, goods, energy and information in interstate and international commerce.

Private sector financial contributions from real estate developments are often essential components to infrastructure projects. Federal spending will always be critical, yet a total legislative package in the range of $1 trillion must also rely on revenue from states, localities and the private sector to meet our country's infrastructure demands. Please consider several of The Roundtable's suggestions for innovative financing sources that can help pay-for infrastructure, and cut unnecessary red tape to keep project costs and permitting delays in-check:

- ***Responsibly and sustainably increase the federal gas "user fee."*** The biggest federal funding source for surface transportation is Highway Trust Fund, capitalized by the "pay at the pump" gas tax. It currently sits at 18.4-cents a gallon for gasoline (24.4-cents/gallon for diesel) – and has not been raised since 1993. The fund is perpetually on the brink of insolvency and frequently bailed-out by Congress. Its purchasing power has been diminished over time by inflation and strides in fuel economy of passenger vehicles. The infrastructure policy debate should properly re-cast the gas tax as a "user fee" that Americans must pay to repair and modernize our roads, bridges mass transit, and grow our economy. This transportation user fee should be increased to sustain the Highway Trust Fund (*e.g.*, the National Association of Manufacturers has supported a 15-cent per gallon increase), and should be indexed to inflation on a going forward basis.

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- ***Allow states to capture lost tax revenues from Internet sales – and devote it to infrastructure.*** Revenue from sales taxes make-up sizeable portions of many states' budgets. However, they lose as much as $30 billion each year because outdated U.S. Supreme Court cases (decided in the pre-Internet age) prevent states from collecting sales and use taxes from out-of state, "remote" sellers. Rising e-commerce puts strains on transportation infrastructure as goods travel to their final destination. To reflect modern e-commerce and avoid the potential for a patchwork quilt of overlapping and confusing state tax laws that disrupt interstate commerce, Congress should finally pass legislation that has been pending for years. Federal law should allow states to freely collect the existing tax that is due and owing on ordinary Internet purchases. Such legislation could be conditioned on increased infrastructure investment by states or offset some of the cost to federal taxpayers. States could then use the steady, reliable stream of on-line sales tax revenues to finance infrastructure projects.

- ***Attract more foreign investment to U.S. infrastructure by repealing or scaling back the Foreign Investment in Real Property Tax Act (FIRPTA).*** The outdated FIRPTA law is a major impediment to greater job-creating investment in U.S. infrastructure by foreign investors. In recent years, with overwhelming bipartisan support, Congress has rolled back certain aspects of the discriminatory FIRPTA statute. For example, in 2015, Congress exempted foreign pension funds from FIRPTA altogether. Your infrastructure initiative should build on the recent progress and mobilize greater foreign capital for job-creating projects here at home by reducing tax barriers to foreign investment in U.S. infrastructure. Specifically, the Treasury Secretary should clarify that the 2015 FIRPTA exemption for foreign pension funds covers the full range of retirement savings structures used outside of the United States. Second, the initiative should propose that Congress fully repeal FIRPTA, thus ensuring that foreign investment in infrastructure is on a level playing field with investment in other asset classes.

- ***Assess whether IRS "volume caps" and other limitations on private-activity bonds (PABs) should be revised to boost infrastructure development.*** Tax-exempt municipal bonds like PABs are proven tools to mobilize public and private co-investment in infrastructure. The IRS should consider whether its volume caps on the capacity of states and localities to issue PABs need adjustment, to help finance the fuller breadth of infrastructure assets and reach the ultimate goal of $1 trillion investment in infrastructure.

- ***Couple successful federal loan programs (like TIFIA) with state and local "value capture" techniques to re-pay that debt – and attract private investors.*** US-DOT's Transportation Infrastructure Finance Innovation Act (TIFIA) program has achieved notable successes through federal loans and guarantees for major projects across the U.S. To leverage more infrastructure investment, TIFIA credit enhancement should be coupled with revenue streams from locally-designated tax increment finance (TIF) and special assessment districts (SADs). These state and local techniques tap into the so-called "transit premium" that attends to higher values of properties with ready and convenient access to public transportation. By harnessing increases in property values to help fund public infrastructure, local property tax revenues and/or special assessments can provide a steady and predictable revenue streams to pay TIFIA debt – while also attracting private investors.

- ***Develop best practices that channel public-private partnerships (P3s) for appropriate projects in appropriate geographies.*** To approach anything in the realm of a $1 trillion price tag for an infrastructure package, private sector co-investment must be part of the overall financing strategy. Best practices are necessary to channel P3s in appropriate circumstances such as where local markets can sustain E-ZPass technologies, fare increases, or utility bill increments to pay for new infrastructure. However, other innovative revenue sources must be developed – like TIF/SAD districts and bond purchases discussed above – to dispel the myth that P3s are only synonymous with toll roads. In short: All public and private sources must be tapped to finance the range of projects needed to satisfy the American peoples' infrastructure demands and keep the U.S. globally competitive.

- ***Prioritize the limited proceeds from the Highway Trust Fund with a "Fix it First" strategy:*** Politicians like to attend ribbon-cutting ceremonies for new projects. Filling potholes and repairing bridges do not attract the same level of support. Specific funding sources – namely, the Highway Trust Fund, capitalized by the "pay at the pump" gas tax – should be identified and prioritized for infrastructure repair and maintenance. Other sources should be devoted for longer-term growth and expanded capacity.

- ***Limit "formula grants" and move toward performance-based criteria:*** Traditional federal transportation dollars are doled-out to states based on pre-set formula grants. More innovative policies should institute a competitive, merits-based process where projects compete for federal support if they meet performance-based criteria tailored to particular infrastructure "asset classes" (*e.g.*, minimize rush hour traffic jams, relieve airport congestion, meet clean drinking water standards, improve Internet access in underserved communities, reduce burdens on the power grid during times of peak demand, etc.). Projects that fail to meet performance criteria should risk losing federal support and/or meet deadlines to get back on track.

- ***Enact common sense reform measures that limit taxpayers' carrying costs for exorbitant liability insurance premiums on public infrastructure projects.*** Federal financial assistance for transportation projects should be offered only where state and local laws are in place to curtail exorbitant and frivolous litigation costs that can needlessly drive-up liability insurance premiums. Such costs that are ultimately borne by taxpayers at public infrastructure construction sites.

- ***Ease regulatory burdens for projects of same size and scope in same location as existing infrastructure.*** If a bridge or road is proposed in the same place as a crumbling one in disrepair, and adds no or minimal traffic, regulatory approvals to obtain federal dollars should be streamlined. Likewise, if lead-tainted water pipes need to be replaced and safer ones will be located in the same spot, public-private partners should be able to swiftly cut through the red tape and bring the project to fruition.

We hope you find these ideas helpful in your efforts to develop and implement your Administration's infrastructure plan. Thank you for your service to our nation. The Roundtable stands-by to assist in these efforts however we can.

Sincerely,

Jeffrey D. DeBoer
President and Chief Executive Officer