

December 6, 2022

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Ave.
Washington, DC 20590

Dear Secretary Buttigieg:

On behalf of our millions of members and supporters, the undersigned hunting, fishing, and conservation organizations, scientific societies, and businesses contributing to the \$862 billion outdoor recreation economy write to express our continued commitment to working closely with the U.S. Department of Transportation (DOT) and the Federal Highway Administration (FHWA) on implementation of the landmark Infrastructure Investment and Jobs Act (IIJA)/Bipartisan Infrastructure Law (BIL).

As the Department and FHWA move forward with implementation of the Surface Transportation Reauthorization Act, we are pleased to see momentum building on key provisions supported by our community including the National Culvert Removal, Replacement, and Restoration Grant Program; the Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) Discretionary Grants Program; and the Wildlife Crossings Safety Pilot Program. Our organizations worked closely with the Biden-Harris Administration and Congressional leaders on the foundational structure and purpose of these provisions and now turn, along with the administration, toward on-the-ground successful implementation.

Firstly, we write to thank the Department and FHWA for issuing a notice of funding opportunity (NOFO) for the National Culvert Removal, Replacement, and Restoration Grant Program. We admire FHWA's focus on delivering a program that meets the standards set forth in recent Presidential Executive Orders focusing on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (EO 12898) and Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (EO 14008). We were also pleased to see your interest in coordinating with other federal fish passage and conservation grant programs. While we recognize the intent to achieve these objectives, we have concerns with other elements of the NOFO. In our opinion, the criteria in Section B – Federal Award Information, and Section C – Eligibility Information, precludes the program from successfully achieving the aforementioned standards in on-the-ground project implementation.

Specifically, Section B states that “Grant awards are administered on a reimbursement basis. Culvert AOP Program funds will reimburse recipients only for reasonable and authorized costs incurred and for work performed after a grant agreement has been executed, allowable expenses are incurred, and valid requests for reimbursement are submitted.” We were alerted to this potential funding strategy early in the NOFO development and immediately initiated conversations with project partners throughout the country, with a focus on the Pacific Northwest, to determine if this reimbursement requirement would preclude them from pursuing

this funding opportunity. We heard unequivocally, particularly from Tribal and rural community partners, that this criteria effectively eliminates their ability to pursue funding from this Program.

A majority of the communities where our organizations work are historically resource-dependent, capacity-limited communities that have been identified as disadvantaged by the [Climate and Economic Justice Screening Tool](#) and have a ‘moderate to high’ or ‘high’ level of vulnerability according to the [CDC Social Vulnerability Index](#). The majority of potential eligible applicants from Tribes or units of local governments within these geographies simply do not have sufficient upfront funding to implement these projects on a reimbursable basis. Numerous other federal agencies recognize this dilemma, and as such, implement grant programs to ensure that historically underfunded communities can access critically important federal funds. We have serious concerns with DOT/FHWA opting not to follow tried and true federal funding disbursement methods, particularly in light of the aforementioned Executive Orders to address equity and barriers to opportunity in the disbursement of federal funds.

We recognize that DOT/FHWA indicated potential for an alternative funding mechanism in the NOFO: “At DOT’s sole discretion alternative funding arrangements may be considered on a case-by-case basis.” However, by not clearly identifying the path that applicants must take to determine eligibility for this alternative, DOT is placing the burden on capacity strapped entities (such as rural counties and Tribes) to dedicate limited staff time to develop grants with no knowledge of whether they meet the criteria for an undefined alternative funding mechanism.

Instead, we propose at least 50% of funding available in the 2022 NOFO be administered via grantmaking, using implementation methods proven effective by other federal agencies like the USFWS and NOAA. In successive years, to eliminate barriers to entry, we encourage that all projects be funded via grantmaking. We also encourage DOT/FHWA to explore opportunities for expeditiously moving this funding toward on-the-ground projects including cooperative agreements with entities such as the National Fish and Wildlife Foundation.

Further, given the capacity challenges that many rural local government and Tribal partners face, we also see implications to the success of the program under Section C of the current NOFO language:

Section C – Eligibility Information

Eligible Applicants are: (1) States; (2) a unit of local governments; or an (3) Indian Tribe. DOT expects that the Eligible Applicant that submits the application will administer and deliver the project.

Numerous other federal funding programs allow for the pass through of funds, to enable entities such as conservation non-profits not under the same capacity limitations and often times with increased access to private philanthropic match funding, to contract with the eligible applicant to perform the on-the-ground project implementation and management duties. If the expectation of DOT is that the applicant must administer and implement the project directly, your solicitation will only secure project applications from large, well-staffed entities and fail to deliver projects in more rural, capacity-limited geographies.

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If that is not the intent of the NOFO, and funding can be passed through to alternative implementation entities, we recommend that an amended NOFO with corrected language be released including consideration for both recommendations above – 1) at least 50% of funding available in the 2022 NOFO be administered via grantmaking, using approved implementation methods proven effective by other federal agencies like the USFWS and NOAA; and 2) the NOFO provide clear indication that the pass through of funds from eligible entities is permitted. Our intent is to share our knowledge of on-the-ground habitat restoration project implementation so that DOT/FHWA is well informed about the impacts that current language and parameters of the NOFO will have on successfully achieving the congressional intent of the program over the years ahead. Additionally, our community would like to engage closely with DOT/FHWA as you continue to advance other programs of importance to our work including the discretionary portion of PROTECT and the Wildlife Crossings Safety Pilot Program.

We look forward to discussing our issues further as we collectively work to advance programs to restore critical ecosystems through funding from IJJA/BIL.

Sincerely,

American Fisheries Society
American Fly Fishing Trade Association
American Woodcock Society
Association of Fish and Wildlife Agencies
Bass Anglers Sportsman Society (B.A.S.S.)
Bonefish & Tarpon Trust
Camp Fire Club of America
Congressional Sportsmen's Foundation
Delta Waterfowl
Fly Fishers International
National Wildlife Federation
North American Falconers Association
Orion: The Hunter's Institute
Ruffed Grouse Society
The Nature Conservancy
The Wildlife Society
Theodore Roosevelt Conservation Partnership
Trout Unlimited
Wild Salmon Center
Wildlife Forever
Wildlife Mississippi

Cc: The Honorable Polly Trottenberg, Deputy Secretary, USDOT
The Honorable Stephanie Pollack, Acting Administrator, FHWA
Mr. Andrew Wishnia, Deputy Assistant Secretary for Climate Policy, USDOT