

California Transportation Commission Update

Subject: Update on the August 2016 California Transportation Commission Meeting.

Background: The California Transportation Commission (CTC) is responsible for programming and allocating certain state funds for the construction of highway, passenger rail, non-motorized facilities, and transit improvements throughout California. The CTC consists of eleven voting members and two non-voting ex-officio members. The San Francisco Bay Area has three (3) CTC members residing in its geographic area: Chair Bob Alvarado, Jim Ghielmetti, and Carl Guardino.

August CTC Meeting (August 17-18, San Diego, California)

The Commission discussed the following issues of significance to the region:

Supplemental Funds Vote for Presidio Parkway

The CTC approved about \$91 million in supplemental State Highway Account funding for the US-101 Presidio Parkway project in San Francisco. The supplemental funds will settle outstanding contractor claims on the project. Of the \$91 million, CTC approved 6% proportional share to come from San Francisco's future STIP funds, despite opposition from the San Francisco County Transportation Authority and MTC. CTC maintains that this is consistent with adopted STIP Guidelines. SFCTA's and MTC's comment letters to the CTC are attached.

ATP Amendment and Advancement Policy Adoption

The CTC approved policies related to amendments of project scope for existing Active Transportation Program (ATP) projects, as well as policies for advancing future year ATP projects into the current year for allocation. Amendments must now be brought to Caltrans and CTC, with major amendments approved by the full CTC. Amendments affecting projects selected through the Metropolitan Planning Organization (MPO) share of ATP must receive approval from the MPO. Regarding advance allocations, projects programmed for construction in future fiscal years may request allocation in the current fiscal year if there is sufficient capacity available.

Other CTC Actions / Items

The CTC also discussed the following:

- **STIP Advancement Policy.** Due to extra STIP allocation capacity in the current year, CTC approved a policy to advance allocate projects involuntarily delayed from the FY 2016-17 year. This could allow San Mateo's SR-92/El Camino Real Interchange project to receive its \$5 million allocation this year.
- **STIP Amendments: San Mateo County.** The CTC approved an AB 3090 reimbursement amendment for the US-101 Willow Road Interchange project in San Mateo County. The AB 3090 will allow San Mateo to use \$8 million of its local sales tax funds to construct the project, which will be paid back in future years. The CTC also

received a notice for an AB 3090 reimbursement amendment for the SR-92/EI Camino Real Interchange project, which may receive an allocation in October instead of an AB 3090.

- **STIP Funding Allocations.** CTC allocated STIP funds for the SR-12 Follow-Up Landscaping project in Sonoma County, as well as funds for Planning, Programming, and Monitoring (PPM) for all 9 Bay Area Congestion Management Agencies and MTC.
- **ATP Funding Allocations.** CTC allocated ATP funds to two projects in the Bay Area: one in Contra Costa County, and one in San Francisco County.

The next CTC meeting is scheduled for October 19-20, 2016 in San Jose, CA.

Issues: MTC and SFCTA staff continue to work with Caltrans and CTC staff to address supplemental fund requests on the Presidio Parkway project.

Recommendation: Information. No action required.

Attachments: Letter from MTC to Ms. Bransen, Executive Director of CTC, re: Presidio Parkway Project, dated August 15, 2016
Letter from SFCTA to Mr. Alvarado, Chair of CTC, re: Presidio Parkway Project, dated August 16, 2016



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Dave Cortese, Chair
Santa Clara County

August 15, 2016

Jake Mackenzie, Vice Chair
Sonoma County and Cities

Ms. Susan Bransen
Executive Director
California Transportation Commission
1120 N Street, MS-52
Sacramento, CA 95814

Alicia C. Aguirre
Cities of San Mateo County

Tom Azunbrudo
U.S. Department of Housing
and Urban Development

Jason Baker
Cities of Santa Clara County

RE: CTC Proposed Allocation for Presidio Parkway Project

Tom Bates
Cities of Alameda County

Dear Ms. ^{Susan} Bransen:

David Campos
City and County of San Francisco

Dorene M. Giacomini
U.S. Department of Transportation

Federal D. Glover
Contra Costa County

Scott Haggerty
Alameda County

Anne W. Halsted
San Francisco Bay Conservation
and Development Commission

Steve Kinsey
Marin County and Cities

Sam Liccardo
San Jose Mayor's Appointee

Mark Luce
Napa County and Cities

Julie Pierce
Association of Bay Area Governments

Bijan Sartipi
California State
Transportation Agency

Libby Schaaf
Oakland Mayor's Appointee

James P. Spering
Solano County and Cities

Adrienne J. Tissier
San Mateo County

Scott Wiener
San Francisco Mayor's Appointee

Amy Warth
Cities of Contra Costa County

Steve Heminger
Executive Director

Alix Boekelman
Deputy Executive Director, Policy

Andrew B. Premier
Deputy Executive Director, Operations

At the California Transportation Commission meeting scheduled for August 17-18, 2016 in San Diego, the CTC will consider a supplemental funds allocation to the Presidio Parkway Public-Private Partnership (P3) project. The California Department of Transportation (Caltrans) requests allocation of \$91.1 million in non-State Transportation Improvement Program (STIP) funds from the State Highway Account (Budget Act Item 2660-302-0042) and Federal Trust Fund (Budget Act Item 2660-302-0890), per Caltrans's recommendation under agenda tab 55. MTC supports Caltrans's recommendation as consistent with the cooperative agreement that governs this unique P3 funding framework.

SFCTA and the State of California, acting through Caltrans, entered into a cooperative agreement and funding agreement on the Presidio Parkway project earlier this decade. The agreements spell out each partner's role, including agreement "to cooperate to seek to secure any additional funds... that are necessary to complete the project." As you know, the agreements for the Presidio Parkway Public-Private Partnership – the first such P3 in California – are the result of lengthy negotiations by the State and were informed by many actions and debates at seven California Transportation Commission meetings.

MTC appreciates the advance dialogue about this month's CTC staff recommendation, which was regrettably omitted in the June supplemental funds allocation action for the same project. MTC understands that CTC staff will continue to recommend a portion of the supplemental funds come from San Francisco's STIP county share, citing Article 49 of CTC's STIP Guidelines. However, we have concerns about this approach for this and future P3 projects. Given the non-traditional nature of this project and its agreements, CTC should consider amending the STIP guidelines to explicitly address the special nature of P3 projects to acknowledge that the agreements take precedent where they conflict with the guidelines. Further, in situations where a P3 project includes funding that CTC allocates, such as regional STIP funds, CTC should consider being a signatory to those funding agreements with the local agency and Caltrans. This would recognize and honor the importance of the complex project agreements and avoid inconsistencies in state agency actions.

To that end, MTC supports Caltrans's proposal to fund the increase through non-STIP funds, as reflected in the memo under agenda tab 55, and encourages the CTC to honor the State's signed commitment through Caltrans. SFCTA and the region continue to support the project, and will work in close cooperation with Caltrans to identify other appropriate fund sources to offset unexpected cost increases, such as San Francisco local sales tax funds and funding from the Presidio Trust. This is consistent with the P3 agreement, which calls for project partners "to cooperate to seek to secure additional funds." We urge CTC to reconsider their allocation recommendation for the August meeting, recognizing the unique nature of this P3 project and agreements.

Thank you for your efforts in resolving the financial issues for this project. Please contact me at (415) 778-5250 if you would like to discuss this letter or the Presidio Parkway project.

Best regards,



Alix A. Bockelman
Deputy Executive Director, Policy

cc: Tilly Chang, Executive Director, San Francisco County Transportation Authority
Malcolm Dougherty, Director, California Department of Transportation
Bijan Sartipi, District Director, California Department of Transportation District 4
Brian Kelly, Secretary, California State Transportation Agency
Scott Wiener, Supervisor and Board Chair, San Francisco County Transportation Authority
Bob Alvarado, Chair, California Transportation Commission
Jim Earp, Commissioner, California Transportation Commission
Jim Ghielmetti, Commissioner, California Transportation Commission
Carl Guardino, Commissioner, California Transportation Commission

AAB:KK

August 16, 2016

Mr. Bob Alvarado, Chair
California Transportation Commission
1120 N Street, MS-52
Sacramento, CA 95814

Subject: Supplemental Funds for Presidio Parkway P3 Project (Resolution FA-16-03)

Dear Chair Alvarado and Members of the Commission:

On behalf of the San Francisco County Transportation Authority (Transportation Authority), I am writing to urge the California Transportation Commission (CTC) to approve the California Department of Transportation's (Department's) supplemental funding request for the Presidio Parkway P3 Project (Item 2.5e.(3) on the August 17-18 CTC meeting agenda). As described in the Department's memorandum, the Department's \$90.1 million request is for a proposed settlement with Golden Link concessionaire, LLC (the P3 contractor or Developer) that would facilitate completion of the project and include dismissal of pending litigation commenced by the Developer. In light of the risks and delay associated with addressing claims made by the Developer in excess of \$225 million, we believe this is a sound business decision for the State, and urge your support.

The Transportation Authority has partnered with the Department on all phases of the Presidio Parkway. We are proud that Phase 2 of the project, which is the first project in California delivered as a P3 project under SB2, was opened to the public on schedule last July, allowing the public to enjoy a seismically safe, new facility. The proposed settlement will bring certainty to all parties, enabling the project to move forward to completion and realize its full public benefits.

The Transportation Authority participated in negotiations with the Department and the Developer, and has played a convener role with the adjacent land owner, the Presidio Trust. In keeping with our responsibilities under the Project Funding Agreement (attached), we have been supporting the Department's efforts to integrate the remaining Presidio Parkway P3 Project landscaping work with the Presidio Parklands project as efficiently as possible and are seeking contributions from the Presidio Trust for this work.

We respectfully disagree with the CTC staff recommendation that the Transportation Authority contribute 6% of its future STIP shares toward all Presidio Parkway Project supplemental allocations, including the \$91.1 million supplemental allocation requested by the Department. According to the May 2012 Project Funding Agreement between the State of California, acting by and through its Department of Transportation, and the Transportation Authority, the Transportation Authority's contribution to the project was capped and our obligation in the event of cost overruns was limited to helping the Department to identify additional resources.



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EXECUTIVE DIRECTOR

As stated by key provisions from the Funding Agreement (emphasis in **bolded text** added):

- i. Recitals Section C – “...**In the event of any conflict** between provisions of any other agreement and this Agreement, **the provisions of this Agreement shall govern.**”
- ii. Article 1.3 – “...Should State and Authority hereafter mutually agree that Project costs, will exceed amounts identified within the Funding Summary, **State and Authority agree to cooperate to seek and secure** any additional funds, beyond those committed in this Agreement, that are necessary to complete the Project.”
- iii. Article 1.8 – “**Amounts shown in Part 2 in the Funding Summary constitute the Authority's maximum obligation for the Project** unless otherwise provided for in this Agreement or agreed to in writing between the Parties.”

Based on this clear language, we believe the Transportation Authority is not responsible for providing funding to cover cost over-runs. Given the extent to which multiple public agencies relied upon this Funding Agreement to take their funding actions, we believe there is a strong basis for recognizing the provisions of the Agreement and exempting the Presidio Parkway from the STIP guidelines.

To not honor the Funding Agreement would set a negative precedent for sponsors or regions that are considering partnering with the Department on future projects using their STIP shares. In addition, the unreliability of the Agreement may have an especially dampening effect on future P3 projects in California. We respectfully ask the Commission to support the Department's recommendation for \$91.1 million in State Highway Account funds and to direct staff to work cooperatively with the Transportation Authority to secure other potential local contributions that could subsequently off-set the supplemental funds.

I appreciate the CTC's consideration of these requests. Please don't hesitate to contact Director Chang with any questions. She can be reached at (415) 522-4832.

Sincerely,



Scott Wiener
Chair, San Francisco County Transportation Authority

Attachment:

1. May 2012 Presidio Parkway Funding Agreement [Not attached for this item]

cc: SFCTA Commissioner Farrell
M. Dougherty, K. Ajise – Caltrans Headquarters
B. Sartipi – Caltrans District 4
S. Heminger, A. Bockelman, A. Richman, K. Kao, R. McKeown – MTC
TC, EC, ALF, MEL