

**Metropolitan Transportation Commission
Programming and Allocations Committee**

November 9, 2016

Agenda Item 5a

Presidio Parkway Supplemental Funds Update

Subject: Update on CTC Supplemental Funds Request for the Presidio Parkway Project in San Francisco.

Background: At the September 14, 2016 Programming and Allocations Committee meeting, the Committee directed staff to prepare materials for the Commission to take a position on the Presidio Parkway project as it relates to funding from the State Transportation Improvement Program (STIP).

CTC Assigns SF's STIP Funds to Cost Increase

In June and again in August, the California Transportation Commission (CTC) approved supplemental funds for the Presidio Parkway Public-Private Partnership (P3) project to cover cost increases. In the 2010 cooperative and 2012 funding agreements for the Presidio Parkway project between the California Department of Transportation (Caltrans) and the San Francisco County Transportation Authority (SFCTA), both parties agreed to cooperate to seek and secure additional funding if needed, and that SFCTA's financial contribution outlined in the agreements was its maximum obligation unless otherwise agreed to in writing. These agreements were the result of lengthy and complex negotiations between Caltrans, SFCTA, MTC, and the private contractor. In accordance with those terms, Caltrans agreed to fund any cost increases through the State Highway Operations and Protection Program (SHOPP). However, this summer, CTC allocated roughly 6% of the supplemental funds from San Francisco's STIP county share, which directly affected San Francisco's limited and fully-committed discretionary funds. Further, neither MTC nor SFCTA were given advance notice of CTC staff's recommendation to deduct San Francisco's STIP shares for this increase, and both opposed it once the action was known.

STIP Guidelines vs. Cooperative/Funding Agreements

The CTC asserts that the STIP Guidelines overrule any other agreements entered into between a project sponsor and Caltrans, acting as the State of California. The CTC also maintains that since it was not a party to the Presidio Parkway agreements, CTC cannot be held to the terms of those agreements. Instead, the CTC relies on the STIP Guidelines which, under Section 49, stipulate that any cost increases are shared proportionally if STIP funds were originally allocated to the project (if the CTC had not approved an alternate cost sharing methodology at the time of the original allocation).

Subsequent Discussions

Both MTC and SFCTA submitted letters in advance of the August CTC meeting requesting that the CTC not apply San Francisco's STIP shares to the supplemental funds vote. Both letters are attached, and cite references to SFCTA's agreements with the State through Caltrans. CTC staff also met with representatives from San Francisco and MTC; however, CTC has so far been unwilling to consider alternatives to STIP funds for the increase.

Options

Staff is pursuing a few options to address the involuntary sequester of STIP funds and to ensure conflicts do not occur in the future:

- Continue discussions with CTC regarding alternate funding in place of STIP funds.
- Discussions with Caltrans regarding its full commitment of SHOPP funds for cost increases, and how SHOPP funds might supplement San Francisco STIP projects.
- Work with other Regional Transportation Planning Agencies and CTC to amend the 2018 STIP Guidelines. Revision should include language recognizing CTC's role in P3 projects funded through the STIP, and expand exceptions to Section 49 of the STIP Guidelines.
- Ensure that any future P3 authorizing legislation include parameters for P3 agreements' overriding power over other state guidelines.

Issues: The CTC's actions have the potential to jeopardize future P3 and alternative delivery method projects, reducing the viability of P3s around the state due to increased uncertainty.

Recommendation: Staff recommends referring this item to the Commission to direct staff to pursue the above options regarding the Presidio Parkway project issue as well as to prevent future P3/STIP conflicts, and to authorize MTC's Chair or Executive Director to submit letters to the State supporting this position starting with the draft included as Attachment 3.

Attachments:

1. Letter from MTC to Ms. Bransen, Executive Director of CTC, re: Presidio Parkway Project, dated August 15, 2016
2. Letter from SFCTA to Mr. Alvarado, Chair of CTC, re: Presidio Parkway Project, dated August 16, 2016
3. Draft Letter from MTC to Ms. Bransen, Executive Director of CTC, re: Presidio Parkway Project, pending Commission action
4. Excerpts from applicable California statutes related to STIP



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Attachment 1

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Dave Cortese, Chair
Santa Clara County

August 15, 2016

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Deputy Executive Director, Policy

Andrew B. Premier
Deputy Executive Director, Operations

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

RE: CTC Proposed Allocation for Presidio Parkway Project

Susan
Dear Ms. Bransen:

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

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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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Tilly Chang
 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



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Attachment 3

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November 16, 2016

Dave Cortese, Chair
Santa Clara County

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

RE: Presidio Parkway Project Supplemental Allocations

Dear Ms. Bransen:

At the California Transportation Commission meeting on August 18, the CTC allocated supplemental funds to the Presidio Parkway Public-Private Partnership (P3) project. Of the \$91 million requested by the California Department of Transportation (Caltrans), about 6% came from San Francisco County's State Transportation Improvement Program (STIP) share. While CTC maintains this action was consistent with CTC's STIP Guidelines, it was inconsistent with various agreements between the San Francisco County Transportation Authority (SFCTA) and the State of California, acting through Caltrans. MTC submitted a letter on August 15 opposing the allocation of STIP funds, and instead supported Caltrans's recommendation that the supplemental funds come from the State Highway Operations and Protection Program (SHOPP). This letter re-affirms MTC's position against the use of STIP funds for cost increases on the Presidio Parkway project.

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 P3 authorized under SB 2X 4 – are the result of lengthy negotiations by the State and were informed by many actions and debates at seven California Transportation Commission meetings.

MTC continues to oppose the use of STIP funds for cost increases on the Presidio Parkway project, given the prior agreements between SFCTA and the State of California. The position was re-affirmed by MTC Commission action on November 16, 2016. While the STIP Guidelines lay out cost sharing procedures for general STIP projects, given the non-traditional nature of this project and its agreements, CTC should consider amending the STIP guidelines 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 subsequent state agency actions.

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 honor the agreements entered into for the Presidio Parkway project, and not allocate any further STIP funds to the project without prior agreement from SFCTA and MTC.

Thank you for your efforts and attention to this important project. Please contact me or Steve Heminger at (415) 778-5210 if you would like to discuss this letter or the Presidio Parkway project.

Best regards,

Dave Cortese
Chair

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
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Carl Guardino, Commissioner, California Transportation Commission

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Attachment 4 to Agenda Item 5a - November 9, 2016
California Statutes Related to STIP

Statute Language	Staff Interpretation
<p>Government Code s. 14527(d) A regional transportation planning agency and a county transportation commission shall have sole authority for determining whether any of the project nominations or recommendations are accepted and included in the regional transportation improvement program adopted and submitted pursuant to this section. This authority provided to a regional transportation planning agency or to a county transportation commission extends only to a project located within its jurisdiction.</p>	<p>State law gives the MTC, as the Bay Area's Regional Transportation Planning Agency, the authority to nominate projects for inclusion in the Regional Transportation Improvement Program (RTIP).</p>
<p>Government Code s. 14529.12(a) The department and the regional planning agencies shall consult and seek consensus on state highway projects to be proposed for inclusion in the state transportation improvement program under Sections 14526 and 14527.</p>	<p>For projects on the State Highway System, the RTPA and Caltrans will consult and seek consensus on projects to be included in the STIP. In the case of Presidio Parkway, MTC (through SFCTA) and Caltrans agreed that the supplemental funds will come from the SHOPP.</p>
<p>Government Code s. 14530.1(b) The guidelines shall include, but not be limited to, all of the following: ... (4) Programming methods for increases and schedule changes.</p>	<p>The California Transportation Commission must adopt STIP Guidelines that include programming methods for cost increases and schedule changes. CTC Guidelines do identify how cost increases will be shared.</p>
<p>Government Code s. 14533 The [California Transportation] commission shall allocate funds for transportation projects consistent with those provisions of the current and prior Budget Acts that apply to the use of the appropriated funds to be allocated. The commission shall not allocate funds for major projects required to be in a state transportation improvement program, or in the department's highway systems operation and protection plan, that are not included in the adopted state transportation improvement program or in the department's highway systems operation and protection plan, except as follows: ... (d) The allocation is to supplement funding for an advertised project.</p>	<p>The California Transportation Commission has the authority to allocate funds for projects, including for projects or amounts not programmed in the STIP, if the allocation will be used to supplement funding for an existing project. This could include situations such as Presidio Parkway, where supplemental funds are required.</p>