Memorandum

To: Chairman and Commissioners **Date:** April 7-8, 2010

From: BIMLA G. RHINEHART **File No: 4.13**
Executive Director **Action**

Ref: **PROPOSITION 1B STATE-LOCAL PARTNERSHIP PROGRAM**
Fiscal Year 2010-11 Guidelines
RESOLUTION SLP1B-G-0910-02

ISSUE:

Under the Commission's previously approved SLPP Guidelines, adopted on July 8, 2009, project applications for the second year (2009-10) of the five-year program were due August 15, 2009, and program was adopted in September and October 2009. The 2009-10 funding share distribution was based on data available at that time. Proposed SLPP guidelines for 2010-11, the third year of the program, have been prepared and are attached. Updated funding share distributions will be prepared and presented at the June 30 – July 1, 2010 Commission Meeting for adoption.

The proposed 2010-11 Guidelines include minor updates to the 2009-10 guidelines, and incorporate changes regarding Letters of No Prejudice, as authorized under AB 672, signed by the Governor on October 11, 2009 and effective January 1, 2010. Commission adoption of the 2010-11 guidelines follows hearings in Northern and Southern California held on March 22nd and 25th, which provided an opportunity for public comment.

RECOMMENDATION:

Commission staff recommends that the California Transportation Commission (Commission) adopt the Proposition 1B State-Local Partnership Program (SLPP) guidelines for 2010-11 (attached).

BACKGROUND:

On November 7, 2006, the voters approved Proposition 1B, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006. Proposition 1B authorized $1 billion for the State-Local Partnership Program, to be available, upon appropriation by the Legislature, for allocation by the Commission over a five-year period to eligible transportation projects nominated by eligible transportation agencies. The program is divided into two sub-programs – a formula program to match local sales tax, property tax and/or bridge tolls (95%) and a competitive program to match local uniform developer fees (5%). The Legislature enacted implementing legislation (AB 268) in 2008 to add Article 11 (commencing with Section 8879.66) to Chapter 12.491 of Division 1 of Title 2 of the Government Code, and appropriated funds for the first year of this program. The 2009-10 Budget includes an appropriation of $200 million for the second year. Of this appropriation, $4 million was set aside for bond administration expenses, and $196 million was available for programming. The Commission was

required by statute to adopt a program by October 2009, and allocations will be made when bond funds are available.

The Commission will, per Section 8879.72 of the Government Code, include in the annual formula program of projects each project nominated by an eligible applicant provided that the Commission determines that the nomination meets the requirements of statute and that the project has a commitment of the required match and any supplementary funding needed for full funding.

The Commission will, per Section 8879.73 of the Government Code, select competitive grant projects from among eligible project nominations. No single competitive grant may exceed $1 million. The Commission considers approval of a competitive grant only when the request meets the requirement of the statute and the project has a commitment of the required match and any supplementary funding needed for full funding.

Any SLPP funds that are not programmed will remain available for future programming.

Attachments

CALIFORNIA TRANSPORTATION COMMISSION
Adoption of State-Local Partnership Program (SLPP) Guidelines
For Fiscal Year 2010-11
April 7-8, 2010

RESOLUTION SLP1B-G-0910-02

1.1 WHEREAS the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, approved by the voters as Proposition 1B on November 7, 2006, authorized $1 billion to be deposited in the State-Local Partnership Program (SLPP) Account, and

1.2 WHEREAS the Bond Act provides that funds in the SLPP Account shall be available to the California Transportation Commission, upon appropriation by the Legislature, for allocation over a five-year period to eligible transportation projects nominated by an applicant transportation agency, and

1.3 WHEREAS implementation legislation for the Bond Act enacted in 2007 (SB 88 and AB 193) designated the Commission as the administrative agency for the State-Local Partnership Program Account and mandated that program guidelines provide for audits of expenditures and outcomes, require that project nominations identify a project's useful life and delivery milestones, and require recipient agencies to report on progress made toward project implementation, and

1.4 WHEREAS implementing legislation specific to the SLPP was enacted as AB 268 (2008), which mandates that the Commission develop and adopt guidelines for the program, adopt the initial program of projects and make initial allocations to projects at the Commission's meeting in April 2009, and by October for each fiscal year thereafter, and

1.5 WHEREAS a draft of proposed 2010-11 SLPP guidelines prepared by Commission staff was made available to the Department and regional agencies on March 16, 2010, and

1.6 WHEREAS the Commission held hearings on the guidelines at the STIP hearings on March 22nd (Sacramento) and 25th (Los Angeles), 2010, and

1.8 WHEREAS Government Code Section 8879.71 requires the Commission to distribute the funds from each annual appropriation to the SLPP Account between the Voter-Approved Taxes and Fees Subaccount (95%) and the Uniform Developer Fees Subaccount (5%), and

1.10 WHEREAS Government Code Section 8879.72 requires the Commission to establish funding shares for each eligible applicant for funding from the Voter-Approved Taxes and Fees Subaccount prior to the commencement of each annual funding cycle, and

1.11 WHEREAS the Commission intends to adopt the 2010-11 SLPP funding distribution at its June 30 – July 1, 2010 meeting in Sacramento.

2.1 NOW THEREFORE BE IT RESOLVED that the Commission adopts the SLPP guidelines for 2010-11, as presented by staff on April 7-8, 2010, and

2.2 BE IT FURTHER RESOLVED that the purpose of these guidelines is to identify the Commission's policy and expectations for the SLPP and thus to provide guidance to eligible applicants and implementing agencies in carrying out their responsibilities under the program, and

2.3 BE IT FURTHER RESOLVED that the Commission intends to approve letters of no prejudice as part of its annual program of projects, and that the Commission intends that approval of a letter of no prejudice would authorize an eligible applicant for SLPP funding to expend its own funds in advance of an allocation for a programmed project and to have those funds qualify for reimbursement, and

2.4 BE IT FURTHER RESOLVED that these guidelines do not preclude any project nomination or any project selection that is consistent with the Bond Act and the implementing legislation in Chapter 12.491 (commencing with Section 8879.50) of Division 1 of Title 2 of the Government Code, and

2.5 BE IT FURTHER RESOLVED that the Commission directs staff to post these guidelines and the 2010-11 funding distribution and formula funding shares, when completed and approved, on the Commission's website and requests that the Department assist Commission staff in making copies available to eligible applicants and implementing agencies.

CALIFORNIA TRANSPORTATION COMMISSION
State-Local Partnership Program
2010-11 Guidelines
April 2010
RESOLUTION SLP1B-G-0910-02

General Program Policy

1. Authority and purpose of guidelines. The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, approved by the voters as Proposition 1B on November 7, 2006, authorized $1 billion to be deposited in the State-Local Partnership Program (SLPP) Account to be available, upon appropriation by the Legislature, for allocation by the California Transportation Commission over a five-year period to eligible transportation projects nominated by an applicant transportation agency. The Bond Act required a dollar for dollar match of local funds for an applicant agency to receive state funds under the program.

   In 2008, the Legislature enacted implementing legislation (AB 268) to add Article 11 (commencing with Section 8879.66) to Chapter 12.491 of Division 1 of Title 2 of the Government Code. Article 11 defines the purpose and intent of the program, defines the eligibility of applicants, projects, and matching funds, and provides that 95% of program funds will be distributed by formula to match voter-approved transportation taxes and fees and that the remaining 5% will be available for a competitive grant application program to match uniform developer fees. Section 8879.74 requires the Commission to adopt an annual program of projects for the program and to develop and adopt guidelines to implement the program, consistent with Article 11. Project allocations are to be made beginning no later than October of each year.

   Earlier legislation to implement the Bond Act (SB 88, Chapter 181, Statutes of 2007) designated the Commission as the administrative agency for the SLPP and mandated that various administrative and reporting requirements be incorporated in the guidelines for all programs established by Proposition 1B.

2. Program of Projects. The Commission will adopt an annual program of projects for the SLPP, by October of each fiscal year. The program will consist of projects nominated by eligible applicants for the formula program and projects selected by the Commission under the competitive grant program to match uniform developer fees. SLPP project funding will match eligible local funding for project construction or equipment acquisition, consistent with Section 8879.70. The Commission will not program or allocate SLPP funding to match local funding for preconstruction work.

   The program of projects for each fiscal year will include, for each project, the amount to be funded from the SLPP, the source of the dollar-for-dollar match of SLPP funding, and the estimated total cost of project construction or equipment acquisition, including any additional supplementary funding. The source of the dollar-for-dollar match will include only revenues from the transportation tax or fee that qualifies the applicant for SLPP funding. The match must be in the Construction component, the same component as

SLPP funds, except in the case of a design build project, where a portion of the match may be in design (PS&E). Eligible match funds must be expended after Commission allocation of the SLPP funds, and concurrently and proportionally to the SLPP funds.

The Commission will program and allocate funding to projects in whole thousands of dollars and will include a project only if it is fully funded from a combination of SLPP and other committed funding. The Commission will regard funds as committed when they are programmed by the Commission or when the agency with discretionary authority over the funds has made its commitment to the project by ordinance or resolution. For federal formula funds, including RSTP, CMAQ, and federal formula transit funds, the commitment may be by federal TIP adoption. For federal discretionary funds, the commitment may be by federal approval of a full funding grant agreement or by grant approval.

The Commission's annual SLPP program of projects will also include multiyear programs of projects for SLPP funding that eligible applicants may elect to adopt and submit to the Commission. The Commission will include these multiyear programs for informational purposes, acknowledging the future plans and intent of the eligible applicants. The inclusion of an applicant multiyear program, however, will not constitute a programming commitment by the Commission for future year funding, except in the case of a project for which the Commission has approved a Letter of No Prejudice based on future year formula funding.

Formula Program for Voter-Approved Taxes and Fees

3. Annual Funding Shares. The Commission will adopt the annual funding share for each eligible applicant for the Voter-Approved Taxes and Fees Subaccount with the adoption of these guidelines and at the beginning of each subsequent fiscal year. These shares will be determined in accordance with Government Code Section 8879.72 and rounded to the nearest whole thousand dollars. In establishing funding shares, the Commission will use the most current data available through June 30 of each year**, as** follows:

- For toll revenues, the sum of revenues from Regional Measures 1 and 2 for the most recent fiscal year, as reported in audited financial statements from the Bay Area Toll Authority.
- For parcel and property tax revenues, the revenues for the most recent fiscal year, as reported to the State Controller pursuant to Government Code Section 53891.
- For local sales tax revenues, the sum of gross revenues for the most recent four quarters as reported for each local tax by the Board of Equalization.
- For population, the annual population estimate for cities and counties issued by the Department of Finance in May prior to the beginning of each fiscal year.

The Commission will determine a funding share for each eligible applicant with a voter-approved tax or toll that was approved prior to the adoption of the funding shares and will be collected during the fiscal year. Where a city has a voter-approved local sales tax and is located within a county without a countywide sales tax, the Commission will adopt a

funding share for the city based on the city's population. Where there are multiple eligible applicants with a voter-approved local sales tax within a county with a countywide sales tax, the Commission will adopt a single countywide funding share based on the population for the county.

The Commission will set aside up to 2 percent of the total amount appropriated each year for the program as a reserve for bond administrative expenses. In the absence of an enacted state budget, the Commission may establish the funding shares based on its best estimate of the amount that the Legislature will appropriate to the SLPP Account, subject to adjustment based on the final appropriation in the Budget Act.

4. Project nominations. The Commission will include in the annual program of projects each project nominated by an eligible applicant for a formula funding share provided that the Commission finds that the nomination meets the requirements of statute and that the project has a commitment of the required match and any supplementary funding needed for full funding. Each applicant should submit its nomination by August 15. The Commission's program of projects shall not include a project nomination that exceeds the applicant's formula funding share, except in the case where an agreement has been reached among agencies to pool shares or borrow from existing formula shares, with repayment to be made out of future formula shares. In the case of such an agreement, a copy of the agreement shall be attached to the project nomination. A nomination shall include the signature of the Chief Executive Officer or other officer authorized by the applicant's governing board. Where the project is to be implemented by an agency other than the applicant, the nomination shall also include the signature of the Chief Executive Officer or other authorized officer of the implementing agency. Applicants for funding from a formula share should submit three hard copies of each nomination. The nominations should be addressed or delivered to:

Bimla G. Rhinehart, Executive Director
California Transportation Commission
Mail Station 52, Room 2231
1120 N Street
Sacramento, CA 95814

A project nomination may be for supplemental funding of a project that was allocated SLPP funding in a prior year, provided that the supplemental SLPP funding and the match for that supplemental funding will not be expended until after the allocation of the supplemental funding. The supplemental SLPP funding may be to replace local funding already committed to the project, subject to the required one-to-one match.

For each nominated project, the applicant should submit project information using the Project Programming Request form in use for STIP projects. The nomination should identify the implementing agency, which may be different from the applicant agency. As specified in statute, the nomination shall include:

- A description of the nominated project, including its cost and scope and the specific improvements and benefits it is anticipated to serve. The description should identify the project's useful life.

- A description of the project's current status, including the current phase of delivery, and the schedule for the completion of construction or acquisition.
- A description of how the project would support transportation and land use planning goals within the region.
- The amount and source of matching funds.
- The amount of SLPP funds requested.

An eligible applicant may adopt and submit a multiyear program for SLPP funding, either in addition to or in lieu of project nominations for the program year. As described in section 2, the Commission's acknowledgement of an applicant's multiyear program will not constitute a Commission programming commitment of future year SLPP funding.

5. Balance of funding share. If the program of projects adopted by the Commission does not program the full amount of an applicant's formula funding share, the balance will remain available for later program amendments supported by eligible project nominations. A balance not programmed in one fiscal year will carry over and be available in the following fiscal year.

Competitive Grant Program to Match Uniform Developer Fees

6. Project selection. The Commission will select projects from among eligible project nominations for the competitive grant program from the Uniform Developer Fees Subaccount pursuant to Government Code Section 8879.73. No single competitive grant for the SLPP may exceed $1 million. The Commission will consider approval of a competitive grant only when it finds that the grant request meets the requirements of statute and that the project has a commitment of the required match and any supplementary funding needed for full funding. The selected projects will be included in the Commission's annual program of projects for the SLPP. The Commission will consider only projects for which five hard copies of a complete nomination are received in the Commission office by August 15. A nomination shall include the signature of the Chief Executive Officer or other officer authorized by the applicant's governing board. Where the project is to be implemented by an agency other than the applicant, the nomination shall also include the signature of the Chief Executive Officer or other authorized officer of the implementing agency. The nominations should be addressed or delivered to:

   Bimla G. Rhinehart, Executive Director
   California Transportation Commission
   Mail Station 52, Room 2231
   1120 N Street
   Sacramento, CA 95814

7. Project applications. For each project nominated for the competitive grant program, the applicant should submit project information using the Project Programming Request form in use for STIP projects. The nomination should identify the implementing agency,

which may be different from the applicant agency. As specified in statute, the nomination shall include:

- A description of the nominated project, including its cost and scope and the specific improvements and benefits it is anticipated to serve. The description should identify the project's useful life.
- A description of the project's current status, including the current phase of delivery, and the schedule for the completion of construction or acquisition.
- A description of how the project would support transportation and land use planning goals within the region.
- The amount and source of matching funds.
- The amount of SLPP funds requested.

In addition, the grant request should include a copy of the ordinance or resolution adopted by a city, county or city and county that establishes the uniform developer fee to be matched by the grant.

An agency may apply for supplemental funding of up to $1 million for a project that was allocated SLPP funding in a prior year or years, provided that the supplemental SLPP funding and the match for that supplemental funding will not be expended until after the allocation of the supplemental funding. The supplemental SLPP funding may be to replace local funding already committed to the project, subject to the required one-to-one match. Prior year funding of a project under the SLPP discretionary grant program is not a selection criterion for funding in a subsequent year. The Commission will evaluate applications competitively in each year.

8. Project selection criteria. In approving grants for inclusion in the program of projects, the Commission will give consideration to geographic balance and to demonstrated project cost-effectiveness. The Commission will give higher priority to projects that are more cost-effective, that can commence construction or implementation earlier, that leverage more uniform developer fees and other funds per program dollar, and that can demonstrate quantifiable air quality improvements, including a significant reduction in vehicle-miles traveled. In addition, the Commission intends to give higher priority to projects nominated by agencies that are located in areas without formula funding shares.

9. Balance of grant program funds. If the program of projects adopted by the Commission does not program the full amount of the share for the competitive grant program, the balance will remain available for later program amendments supported by eligible project grant requests. A balance not programmed in one fiscal year will carry over and be available for the competitive grant program in the following fiscal year.

Project Allocations and Delivery

10. Amendments to program of projects. The Commission may approve an amendment of the SLPP program of projects at any time. An amendment need only appear on the

agenda published 10 days in advance of the Commission meeting. It does not require the 30-day notice that applies to a STIP amendment.

11. Allocations from the SLPP Account. The Commission will consider the allocation of funds from the SLPP Account for a project when it receives an allocation request and recommendation from the Department of Transportation, in the same manner as for the STIP (see section 64 of the STIP guidelines). The recommendation will include a determination of the availability of appropriated funding from the SLPP Account and the availability of all identified and committed matching and supplementary funding. The Commission will approve the allocation if the funds are available, the allocation is necessary to implement the project as included in the adopted SLPP program, and the project has the required environmental clearance.

12. Letter of No Prejudice. The Commission will consider approval of a Letter of No Prejudice (LONP) to advance a programmed SLPP project. Approval of the LONP will allow the agency to begin work and incur eligible expenses prior to allocation. The LONP Guidelines were adopted in December 2009 and are available on the Commission's website.

    The Commission shall establish, using the distribution formula set forth in Government Code Section 8879.71, subdivision (a), projected targets for distribution of formula funds not yet appropriated for the purpose of planning consistent with Section 8879.501 (LONP). These projected targets will be annually reviewed and revised. If an implementing agency requests and receives approval for a LONP against future, not yet appropriated formula funds, that agency proceeds at its own risk, as there is no guarantee of when those future funds will be made available for allocation. Allocation to reimburse expenses under an approved LONP cannot occur prior to appropriation and availability of formula funds in each funding cycle. In no case shall an allocation exceed the agency's formula share in that funding cycle year.

13. Timely Use of Funds. Under statute, projects receiving an SLPP allocation shall encumber the funds no later than two years after the end of the fiscal year in which the Commission makes the allocation. Commission policy, however, is that SLPP allocations are requested in the fiscal year of project programming, and are valid for award for six months from the date of approval unless the Commission approves an extension. Applicants may submit and the Commission will evaluate extension requests in the same manner as for STIP projects (see section 66 of the STIP guidelines).

14. Semiannual delivery reports: As a condition of the project allocation, the Commission will require the implementing agency to submit semiannual reports on the activities and progress made toward implementation of the project.

    As mandated by Government Code Section 8879.50, the Commission shall forward these reports to the Department of Finance. The purpose of the reports is to ensure that the project is being executed in a timely fashion and is within the scope and budget identified when the decision was made to fund the project. If it is anticipated that project costs will exceed the approved project budget, the implementing agency shall provide a plan to the

Commission for achieving the benefits of the project by either downscoping the project to remain within budget or by identifying an alternative funding source to meet the cost increase. The Commission may either approve the corrective plan or direct the implementing agency to modify its plan.

15. Final delivery report. Within six months of the project becoming operable, the implementing agency shall provide a final delivery report to the Commission on the scope of the completed project, its final costs as compared to the approved project budget, its duration as compared to the project schedule in the project agreement, and performance outcomes derived from the project as compared to those described in the project agreement. The Commission shall forward this report to the Department of Finance as required by Government Code Section 8879.50.

    For the purpose of this section, a project becomes operable when the construction contract is accepted or acquired equipment is received.

16. Audit of project expenditures and outcomes. The Department of Transportation will ensure that project expenditures and outcomes are audited. For each SLPP project, the Commission expects the Department to provide a semi-final audit report within 6 months after the final delivery report and a final audit report within 12 months after the final delivery report. The Commission may also require interim audits at any time during the performance of the project.

    Audits will be performed in accordance with Generally Accepted Government Auditing Standards promulgated by the United States Government Accountability Office. Audits will provide a finding on the following:

    - Whether project costs incurred and reimbursed are in compliance with the executed project agreement or approved amendments thereof; state and federal laws and regulations; contract provisions; and Commission guidelines.
    - Whether project deliverables (outputs) and outcomes are consistent with the project scope, schedule and benefits described in the executed project agreement or approved amendments thereof.