

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: June 30–July 1, 2010

Reference No.: 2.5g.(9b)
Action Item

From: NORMA ORTEGA
Chief Financial Officer

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Budgets

Subject: **FINANCIAL ALLOCATION FOR A LOCALLY-ADMINISTERED MULTI-PROGRAM
RAIL PROJECT
RESOLUTION GS1B-A-0910-
RESOLUTION BFP-09-**

RECOMMENDATION:

The California Department of Transportation recommends the California Transportation Commission allocate \$30,000,000 Proposition 1B Highway-Railroad Crossing Safety Account (HRCSA) Program funds and \$52,237 Proposition 116 Rail Program funds authorized under Public Utilities Code Sections 99636(a)(b) and (c), for the San Bruno Grade Separation project in San Mateo County.

ISSUE:

The attached vote list describes the San Bruno Grade Separation project (EA H009BA/PPNO 04-1003I) in San Mateo County. The project is currently programmed in the Proposition 1B HRCSA Program and the State Transportation Improvement Program (STIP) (Project 55 on the Delivered List). Due to Public Transportation Account funding constraints, the agency has submitted a request for Senate Bill 184 authority for the STIP portion of the project. Additionally, the agency is requesting a concurrent action to program \$52,237 in Proposition 116 Bond funds made available from cost savings on other Proposition 116 projects.

The local agency is ready to proceed with this project and is requesting an allocation for Proposition 1B HRCSA and Proposition 116 funding at this time.

FINANCIAL RESOLUTION:

- 1.1 WHEREAS, the California Transportation Commission (Commission) has adopted an annual program for mass transportation capital purposes, and the electorate enacted both Proposition 108-the Passenger Rail and Clean Air Bond Act of 1990, and Proposition 116-the Clean Air and Transportation Improvement Bond Act of 1990, authorizing the sale of general obligation rail bonds for rail transit purposes; and

- 1.2 WHEREAS, the project further detailed on the attached vote list, as component phases or in its entirety, appears on the necessary State capital projects funding list and is entitled to participate in this allocation; and
- 1.3 WHEREAS, the Commission has established a "Hazardous Waste Identification and Clean-up Policy" (#G-91-2) which requires the Recipient to perform, with diligence, the process of identification and remediation of any hazardous waste in the right-of-way, easements and properties.
- 2.1 NOW THEREFORE BE IT RESOLVED, that \$52,237 in PROPOSITION 116 CLEAN AIR AND TRANSPORTATION IMPROVEMENT BOND proceeds and \$30,000,000 in PROPOSITION 1B Highway Railroad Crossing Safety Account Program funds from the Budget Act of 2007, Budget Act Item 2660-104-6063, be allocated to the recipient for construction of the San Bruno Grade Separation Project detailed on the attached vote list; and
- 2.2 BE IT FURTHER RESOLVED, that the transfer of funds for the project shall be governed by a program supplement, and subsequent amendments to the same if required; and
- 2.3 BE IT FURTHER RESOLVED, that the recipient shall provide the Department's Division of Mass Transportation with an updated expenditure plan on a quarterly basis by category including any proposed changes for the balance of all funded project allocations commencing with the first quarter; and
- 2.4 BE IT FURTHER RESOLVED, that in any instance of rail bond financing of a project, the Commission, acting on behalf of the State, by this resolution intends:
 - A. To cause and approve the issuance of taxable or tax-exempt State general obligation bonds under Proposition 116, as appropriate, to reimburse the recipient for the project identified on attached vote list;
 - B. To reimburse the recipient for expenditures that shall not have been paid from the proceeds of any other tax-exempt indebtedness unless such prior indebtedness is retired with the proceeds of such State monies;
 - C. That this resolution be a declaration of official intent of the State within the meaning of U.S. Treasury Regulations Section 1.103-17(c) with respect to the project; and
- 2.5 BE IT FURTHER RESOLVED, that in any instance of rail bond financing, an allocation for a project is subject to the following conditions and assurances:
 - A. Completed bond sales authorized by the Office of the State Treasurer;
 - B. Receive bond certification from the Department, preferably prior to the Commission's allocation action but, certification must be obtained prior to execution of the fund transfer agreement;
 - C. The recipient's certification that it will not adopt new or increased current development taxes, fees, exactions or permit fees for the purpose of providing local matching funds;

and the certification of this delivered to this Commission, preferably by the time of Commission allocation action but not later than prior to execution of a fund transfer agreement;

- D. A formal resolution by the recipient's board stating that when utilizing State funding for acquisition of property or for capital improvements on the project, recipient has exercised all due diligence in the discovery of hazardous wastes; that recipient will enter into enforceable agreement(s) with any and all owners of to-be-acquired properties for clean-up of hazardous wastes pursuant to the requirements of resolution G-91-2 regarding Hazardous Waste Identification and Clean-up for Rail Right-of-Way;
 - E. A formal resolution by the recipient's board, stating that when utilizing state-provided and other-than-state funding for acquisition of property or for capital improvements on the project, that no additional State funds will be requested for clean-up, damages, or liability associated with hazardous wastes on or below the acquired property, delivered to this Commission;
 - F. That in any instance of rail bond financing with Proposition 116 funds, eligible costs may be incurred for project development after the project application approval, and all reimbursements of eligible costs are subject to an executed fund transfer agreement;
 - G. The recipient shall provide the Commission with an "Evaluation of Property Report" by the time of the Commission allocation action, in compliance with Commission Policy G-95-09, Rail Right-of-Way Review Policy, to be verified by the Department or its agent;
 - H. The recipient shall post on the project construction site at least one sign, visible to the public, stating that the project is partially funded with Proposition 116 Clean Air and Transportation Improvement Bond Act of 1990 proceeds; and
- 2.6 BE IT FURTHER RESOLVED, that this Commission shall be entitled to a then present value refund, or credit, at State's option, equivalent to the proportionate funding participation by the State towards property acquisition and project construction in the event that recipient, or successor public entities, fail or cease to utilize the project for the intended public passenger rail purposes or sells or transfers title to the project. The credit for future purchases or condemnation of all or portions of the project by the State, and the refund or credit due the Commission in each instance, will be measured by the ratio of State and other public funding to that provided from recipient. That ratio will be applied to the then fair market value of the project property; and
- 2.7 BE IT FURTHER RESOLVED, that if the recipient receives any revenues or profits from any non-governmental use of property allowed pursuant to bond certification (whether approved at this time or hereafter approved by the State), the recipient agrees that such revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or maintenance and operational costs. If the recipient does not so dedicate the revenues or profits, a proportionate share shall (unless disapproved by State's Bond Counsel) be paid to the State equivalent to the State's percentage participation in the project.

- 2.8 BE IT FURTHER RESOLVED, that an allocation for each project is subject to the following conditions and assurances:
- A. Reimbursements of eligible costs are subject to the terms and conditions of the executed fund transfer agreement;
- 2.9 BE IT FURTHER RESOLVED, that as a condition of allocation of these funds and to perform its administrative role established by SB 88, the Commission requests that the Department perform the functions necessary to ensure proper accountability measures are employed and reporting requirements are met for the Proposition 1B Highway-Railroad Crossing Safety Account Program.
- 2.10 BE IT FURTHER RESOLVED, that for construction, the recipient must complete the work to be reimbursed and the actual reimbursement by June 30, 2014, unless the Commission authorizes a waiver that extends, if permitted by statute, the period of availability of the funds.

Attachment

