PASSED BY

CTC

AUG 14 2003

CALIFORNIA TRANSPORTATION COMMISSION

CALIFORNIA TRANSPORTATION COMMISSION
Adoption of Letter of No Prejudice Guidelines
Amending the Traffic Congestion Relief Program Guidelines

RESOLUTION G-03-12,
Amending Resolution G-00-23

1.1 WHEREAS the Traffic Congestion Relief Act of 2000 (herein after referred to as "statute"), which was established by Chapters 91 (AB 2928) and 656 (SB 1662) of the Statutes of 2000, establishes the Traffic Congestion Relief Program (TCRP), providing $5.39 billion for projects throughout the State of California to reduce traffic congestion, provide for safe and efficient movement of goods, and provide system connectivity; and

1.2 WHEREAS in accordance with Government Code Section 14556.33 the California Transportation Commission (Commission) may adopt guidelines, in consultation with the Department of Transportation (Department) and representatives of regional and local agencies, regarding the approval and administration of a Letter of No Prejudice (Letter) for TCRP projects, granted to lead applicant agencies allowing the regional or local entity to expend its own funds for any component of said agency's TCRP project; and

1.3 WHEREAS the Commission developed draft Letter guidelines in consultation with the Department; and

1.4 WHEREAS a workshop was conducted on June 11, 2003, with representatives of regional and local agencies to seek comment and input to the draft Letter guidelines; and

1.5 WHEREAS revised Letter guidelines were emailed to regional and local agencies for additional comment on July 21, 2003; and

1.6 WHEREAS the proposed Letter guidelines were prepared in consideration of received comments regarding the draft Letter guidelines; and

1.7 WHEREAS the proposed Letter guidelines apply to all projects, funds, and lead applicant and implementing agencies specified in Government Code Section 14556.40, from article 5 of the act; and

1.8 WHEREAS the proposed Letter guidelines are an extension and amend the TCRP guidelines adopted by the Commission in Resolution G-00-23.

2.1 NOW THEREFORE BE IT RESOLVED the Commission does hereby adopt the Letter of No Prejudice (Letter) guidelines, amending the Traffic Congestion Relief Program guidelines, and

2.2 BE IT FURTHER RESOLVED the Commission requests the Department, in cooperation with the Commission staff, to distribute copies of the adopted Letter guidelines to lead applicant agencies, regional agencies, transit agencies and representatives of local agencies.

8-5-2003

PROPOSED

CALIFORNIA TRANSPORTATION COMMISSION
GUIDELINES FOR
LETTER OF NO PREJUDICE
TRAFFIC CONGESTION RELIEF PROGRAM

Resolution G-03-12

CALIFORNIA TRANSPORTATION COMMISSION
GUIDELINES FOR
LETTER OF NO PREJUDICE
TRAFFIC CONGESTION RELIEF PROGRAM

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1 AUTHORITY AND PURPOSE

1.1 **Authority and Scope:** Government Code Section 14556.33, established by Chapter 908 (AB1335) of the Statutes of 2001 allows the California Transportation Commission (Commission) to establish guidelines regarding Letter of No Prejudice (Letter) approval for lead applicant agencies allowing the regional or local entity to expend its own funds for any component of said agency's Traffic Congestion Relief Program (TCRP) project. These statutes require the Commission to consult with the Department and representatives of regional and local agencies in developing the guidelines.

These guidelines apply to all projects, funds, and lead applicant and implementing agencies specified in Government Code Section 14556.40, from article 5 of the act, in regards to a Letter. These guidelines become effective upon adoption by the Commission. The Letter Guidelines are intended as an extension of the TCRP Guidelines approved under Resolution G-00-23 and are limited to TCRP Projects requesting/receiving approval for a Letter. All other provisions of TCRP Guidelines remain in effect.

It should be noted that agencies proceed at their own risk and that reimbursement is dependent on availability of TCR funding. The Letter is NOT an AB 3090 reimbursement or replacement project.

The Commission may amend these guidelines at any time after first giving notice of the proposed amendments.

1.2 **Text of Government Code Section 14556.33:**

14556.33. (a) A regional or local entity that is a lead applicant agency under Article 5 (commencing with Section 14556.40), may apply to the commission for a letter of no prejudice for the project. If
approved by the commission, the letter of no prejudice allows the regional or local entity to expend its own funds for any component of the transportation project.

(b) The amount expended under subdivision (a) shall be reimbursed by the state if all of the following conditions are met:
(1) The project is included in an adopted regional

transportation plan.
(2) The department makes an allocation for the project pursuant to Section 14556.20.
(3) The expenditures made by the regional or local entity are eligible for reimbursement in accordance with state and federal laws and procedures. In the event expenditures made by the regional or local entity are determined to be ineligible, the state has no obligation to reimburse those expenditures.
(4) The regional or local entity complies with all legal requirements for the project, including the requirements of the California Environmental Quality Act (Division 13 (commencing with Section21000) of the Public Resources Code).

(c) Upon execution of an agreement with the department to transfer reimbursement funds for a project described in subdivision (a), the commission may delay reimbursement pursuant to this section only if cash-management issues prevent immediate repayment.

(d) The commission, in consultation with regional and local entities, and the department, may develop guidelines to implement this section.

1.3 **Definitions:** For purposes of these guidelines the following definitions apply:

- All definitions as indicated in the TCRP Guidelines approved under Resolution G-00-23.
- Local funds means that funding which is generated by, and/or under the direct control of the local entity and is not earmarked for a specific project or purpose, including, but not limited to:
  - ✓ City/County share of gas tax, general funds, Mello-Roos bonds, etc.
  - ✓ County sales tax measures
  - ✓ Redevelopment agency funds
  - ✓ Private funding
  - ✓ Native American Tribes funds
  - ✓ Funding from neighboring states and countries
  - ✓ Federal CMAQ or RSTP funds. The lead applicant agency shall identify replacement project(s) consistent with the purpose of these funds at the time of the allocation request for TCRP funds.
  - ✓ Other funds as may be determined by the Commission.
- Local funds do not include funds from:

- ✓ STIP-IIP
- ✓ STIP-RIP
- ✓ SHOPP
- ✓ Federal High Priority (Demo) program.
- ✓ Other non-locally controlled funds.

- "State and Federal laws and procedures" as cited in Government Code Section 14556.33.(b)(3) means the State policies and regulations and Federal Code of Regulations governing the uniform administration of grants and cooperative agreements to State and local agencies, contracting regulations, acquisition of real property, cost principles, and related matters. Section 14556.33.(b)(3) does not require that a project be federalized to seek approval for a Letter.

1.4 **Purpose and Objectives of Guidelines:** These guidelines are intended to clarify and interpret statutes and to guide and facilitate local, regional and state actions related to obtaining an approved Letter. The Commission intends with these guidelines to:

- Limit the scope of guidelines consistent with the act.
- Clarify roles and responsibilities.
- Maintain accountability for actions of the agencies involved.
- Enable lead agencies that are considering a Letter to ~~access~~ **assess** the risk for allocation and reimbursement from the Traffic Congestion Relief Fund (TCRF) when planned.
- Manage approval of allocations to maintain sufficient cash balances to make timely allocation and reimbursements for completed phases with an approved Letter.

It is the intent of the Commission to give equal opportunity for available funding to TCRP lead applicant agencies that are able to make progress on projects under an approved Letter and those that must seek an allocation from the TCRF to continue work on the project. The Commission further intends that lead applicant agencies considering the use of a Letter have the most accurate information available to assess the likelihood of allocation and reimbursement as planned.

2 RESPONSIBILITIES

2.1 **Lead Applicant Agency:** The Lead Applicant Agency is responsible for:

- Submitting request(s) for Letter approval including all necessary documentation (including project applications and amendments, STIP allocation requests, replacement funding description and commitment verification).
- Making diligent progress on the TCRP project with an approved Letter and reporting that progress to the Commission.
- Submitting amendments when changes are necessary to an approved Letter.
- Communicating with and monitoring progress of implementing agencies.
- Submitting allocation requests and all necessary information in accordance with these guidelines.
- Executing an agreement with the Department and providing all necessary documents required for receiving a reimbursement.
- Dispensing reimbursement to contributors of local funds.

2.2 **Implementing Agency:** The Implementing Agency is responsible for:

- Communicating with the Lead Applicant Agency.
- Performing work using alternate local funds.
- Reporting project progress.
- Submitting notice of completion.
- Accounting for expenditure of alternate local funds in accordance with TCRP Guidelines for allocated funding, including Section 6.5, Audits, of the TCRP Guidelines.
- Complying with all legal requirements for the project, including the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

2.3 **Commission:** The Commission is responsible for:

- Adopting and amending these guidelines
- Approving assumptions and accepting cash forecasts in TCRF Cash and Allocation Capacity
- Receiving, reviewing, and approving (or denying) Letters.
- Establishing priorities for reimbursement.
- Directing the allocation of funds for reimbursement of Letters.

- Considering and approving (or denying) amendments to Letter status.
- Making findings regarding project progress.

2.4 **Department of Transportation (Department):** The Department is responsible for:

- Reviewing Letter requests and advising the Commission
- Administering and tracking of Letter status.
- Allocating funds as directed by the Commission.
- Preparing and administering agreement(s).
- Assisting the Commission in meeting its intent for timely reimbursements, and local and regional agencies in assessing the risk associated with using local funds and seeking reimbursement under a Letter.
- Producing the TCRF Cash and Allocation Capacity projection.. The TCRF Cash and Allocation Capacity projections will include:
  - ✓ Existing resources and expected new revenue for TCRF.
  - ✓ Estimated cash-flow requirements for existing allocations.
  - ✓ Reserves of resources for the allocation and reimbursement of Letter and to make new allocations for those projects and phases that will proceed without an approved Letter.
  - ✓ TCRF approved amounts for existing approved Letters, shown with the anticipated allocation and reimbursement schedule.

3 LETTER REQUEST

3.1 **Submittal of Letter Request:**

- Letter requests shall be submitted by Lead Applicant Agencies in accordance with established timeframes for TCRP applications and amendments for timely consideration by the Commission.
- In order to be considered by the Commission, a Letter request shall:
  - ✓ Be signed by a duly authorized agent of the lead applicant agency.
  - ✓ Include all relevant information as described in 3.2 below.
  - ✓ Indicate the specific phase(s) of the TCR project covered by the Letter.
  - ✓ Have an approved TCR project application.

- ✓ Indicate that the implementing agency is ready to start (or continue) work on the specific phase(s) covered by the Letter request.
- ✓ Have a full and committed funding plan for the specific phase(s) covered by the Letter request.
- ✓ Anticipated allocation and reimbursement schedule.

3.2 **Content and Format of Letter Request:** The Commission expects a complete Letter request to include, at a minimum, the following information as applicable:

- A letter requesting Letter of No Prejudice status. The request shall include a summary of any concurrent actions needed from the commission (up-dated project application information) and a discussion of the source(s), amount and commitment of funding to be used in place of TCR funds.
- Documents needed for obtaining concurrent Commission approval for TCR applications and/or amendments in accordance with TCR guidelines and standards.
- Letter requests must identify the alternate local funds that will be substituted for TCRP funds and provide a demonstration of commitment (e.g., resolution, minute order) from its policy board that the alternate funds are available.
- A cost schedule, including anticipated allocation request date and reimbursement schedule, for the phase or phases covered by the Letter.
- Letter requests for phases of work jointly funded by TCRF and STIP shall include a STIP allocation request or a STIP AB 3090 request.
- Letter requests for construction or procurement phase of a project that expands or extends transit service (rail, bus, or ferry) must be accompanied by demonstration of financial capability to operate the expanded service once the project has been completed.
- Letter requests for capital phases (right of way and/or construction) must include documentation for Commission review of the Final Environmental Document, **as appropriate**, and approval for consideration of future funding.

3.3 **Review of Letter Requests:** Review of Letter requests shall be conducted in accordance with TCRP Guidelines and established timeframes for project application approval.

3.4 Commission Approval of Letters

- The Commission will generally approve requests for Letter's that meet the guidelines, except for Letter requests for phases of work jointly funded by TCRF and STIP, which shall be dependent upon concurrent approval of the STIP allocation or a STIP AB 3090 request.
- Lead Applicant Agencies may submit requests for a retroactive Letter up to ninety-days after the Commission adopts the Letter Guidelines. Letter requests submitted within the ninety-day time frame will be retroactive to January 1, 2002, the effective date of AB 1335. All subsequent Letter requests, after the ninety-day grace period, will be effective from the date of the Commission approval of the request.
- The Commission will consider concurrently an application approval or application amendment request with a Letter request from an eligible Lead Applicant Agency.
- A Letter will only be granted for the phase or phases that are in an approved application or application amendment and is valid for the scope(s), schedule(s) and funding that is approved.

4 LETTER/PROJECT MONITORING

4.1 **Initiation of Work:** Lead Applicant Agencies shall report to the Department when a phase of work covered by an approved Letter is ready to proceed. Within 6 months following this date, the agency shall report to the Department on progress in executing agreements and third-party contracts needed to execute the work.

4.2 **Monitoring Progress of Projects with a Letter:** Lead Applicant Agencies for TCRP projects with an approved Letter shall report on progress to date in conformance with the TCR Program Reporting Guidelines regarding expenditures to date, work completed, problems and issues with project, and updating the funding plan for project for each phase.

4.3 **Project Changes:** Proposed changes in funding, schedule or project scope for a TCRP project with an approved Letter must be requested by the Lead Applicant Agency, and is subject to Commission approval.

4.3 Diligent Progress and Rescinding a Letter:

- If progress reports from a lead applicant agency on a TCRP project with an approved Letter show that diligent progress is not being made in completing the project as reported by the Department, the Commission may request the agency to explain its lack of progress.
- The Commission may rescind the Letter or may direct the agency to demonstrate it is making diligent progress within the next six-month reporting period.
- If the Commission finds the lead applicant agency is not pursuing project work diligently, the Commission may rescind the Letter.
- The Commission will not make an allocation to an applicant requesting reimbursement for a TCRP project with an approved Letter, if its Letter is rescinded.

5 ALLOCATION AND REIMBURSEMENT OF LETTER

5.1 Allocations for Letters:

- Up to one-half of the resources appropriated in a given fiscal year to the TCRF will be reserved for allocation and reimbursement for approved Letters.
- Priority for allocation and reimbursement will be based on the date of approval of the Letter.
- If multiple Letters are approved on the same date, and resources are insufficient to allocate and reimburse for all Letters, allocation and reimbursement will be made on a prorated basis with the remaining allocation and reimbursement scheduled for the next fiscal year, subject to availability of funding in that fiscal year.

5.2 Completed Phases Under an Approved Letter.:

- Upon completion of the phase(s) of a Letter approved by the Commission, the lead applicant agency may request to have its Letter liquidated with an allocation by the Commission, or at the Commission's direction by the Department.
- The lead applicant agency shall identify the source(s) and estimated expenditures of all funds used in completing the phase or phases of the project for which the applicant is seeking an allocation from the Commission.

- Upon allocation, the statutes require the Department to execute a cooperative agreement or master agreement / program supplement before it can provide reimbursements for eligible project expenditures. The Department will enter into the agreement with the lead applicant agency.
- Lead applicant agencies will receive funds as reimbursement for eligible costs included in invoices submitted in accordance with the provisions of the cooperative agreement.
- It is the responsibility of the lead applicant agency to disperse funds to all contributors of the alternate local funds.
- Statutory provisions related to cost increases or savings and for compliance audits shall remain in effect for project phases with an approved Letter.

5.3 Partially Completed Phases Under an Approved Letter.:

- When funds exist, the lead applicant agency with a partially completed phase(s) may request an allocation to convert the Letter for reimbursement of eligible costs to date and periodic (monthly) reimbursement for the remainder of the phase(s).