

Memorandum

To: CHAIR AND COMMISSIONERS

Date: March 17, 2010

From: BIMLA G. RHINEHART
Executive Director

File: Item 1
ACTION

Ref: Trade Corridors Improvement Fund (TCIF) – Project Baseline Agreement

ISSUE

Should the Commission approve the TCIF Project Baseline Agreement for TCIF Project 79: *Colton Crossing Project* in accordance with the Commission's TCIF Guidelines and Resolution TCIF-P-0708-01, "Adoption of Program of Projects for the Trade Corridors Improvement Fund (TCIF)," dated April 10, 2008 and establish this agreement as the baseline for project delivery monitoring?

RECOMMENDATION

As the Project Baseline Agreement submitted by the Department of Transportation for TCIF Project 79: *Colton Crossing Project* submitted to the Commission on March 16, 2010 does not meet the requirements of the Commission's TCIF Guidelines and Resolution TCIF-P-0708-01, "Adoption of Program of Projects for the Trade Corridors Improvement Fund (TCIF)," dated April 10, 2008, or the requirements for submittal under AB 268 (Chapter 756, Statutes of 2008), Commission staff recommends that the Commission not approve this agreement.

BACKGROUND

The Commission, at its April 10, 2008 meeting, adopted the TCIF program, which included TCIF Project 79: *Colton Crossing Project*. In the adopting resolution, Resolution TCIF-P-0708-01, the Commission directed nominating agencies to provide executed Project Baseline Agreements, no later than its July 2008 meeting (with the exception of grade separation and mainline rail projects where this deadline was extended to the September 2008 meeting), that set forth the proposed project scope, measurable expected performance benefits, delivery schedule, and project budget and funding plan. The Commission also directed that the Project Baseline Agreements be signed by the Director of the Department of Transportation, the regional agency and nominating agency executive directors, and the CTC Executive Director. The Commission required that the Project Baseline Agreements include quantification of projected benefits related to velocity, throughput, reliability, congestion reduction and emissions reduction. For investments in rail projects, the Commission required a memorandum of understanding (MOU) between the private railroad and the regional agency and/or the Department to be in place by the time of the execution of the Project Baseline Agreement. The Commission required that the MOU detail how and when public and private funding would be made available, and what public benefits would be realized as a result of TCIF

investments. Further, the TCIF Guidelines require that the MOU stipulate what public benefits (i.e., additional passenger rail capacity and investments in grade separations) would accrue to the affected regions and by when those benefits would be realized.

On May 6, 2008, Commission staff held a workshop for TCIF sponsoring agencies to discuss the requirements of the program, including Project Baseline Agreements. In order for the Commission to approve a Project Baseline Agreement, the sponsoring agencies were instructed to submit an executed Project Baseline Agreement, including all required attachments. Required attachments included the Project Programming Request Form (PPR), a Project Study Report/Project Study Report Equivalent (PSR), and a Project Benefits Form, and for mainline rail projects, an executed MOU as discussed above.

Subsequent to the adoption of the TCIF program, the Legislature passed AB 268 on September 16, 2008, which requires that the *Colton Crossing Project* meet certain delivery timeframes to remain in the TCIF program. Specifically, AB 268 (Chapter 756, Statutes of 2008) states: “if the Colton Crossing project programmed in the commission’s TCIF Program as of April 10, 2008, does not meet the requirements or delivery schedule contained in its project baseline agreement when reviewed by the commission no later than March 2010, the project shall be ineligible to receive an allocation from the TCIF. The ninety-seven million dollars (\$97,000,000) associated with the project shall then be available for programming in the Los Angeles/Inland Empire Corridor...”

In accordance with the TCIF Guidelines and Resolution TCIF-P-0708-01, Commission staff reviewed the Project Baseline Agreement submitted by the Department on March 16, 2010 for TCIF Project 79: *Colton Crossing Project*. Based on this review, Commission documented the following deficiencies with the Project Baseline Agreement:

- The PPR contains errors and inaccuracies. The amounts by fund and fiscal year do not match the amounts in the project summary section. There is also a computation error in the Right of Way capital costs, which results in an error in the total project cost of approximately \$4 million. In addition, the funding commitments of the railroads are shown as a lump sum amount. The PPR should document the funding commitment of each railroad (UP and BNSF).
- The PSR does not include an evaluation of the various alternatives including estimated cost, does not clearly identify the preferred alternative, and does not explain the basis for the selection of the preferred alternative. The preferred alternative appears to include significant benefit to BNSF beyond the basic grade separation for the existing two tracks. The proposed flyover will be designed and built to accommodate a third track in the future. The PSR does not evaluate the potential cost impact of a flyover designed to accommodate three tracks as opposed to two tracks nor does it evaluate how this private betterment benefits the public investment in the project.

- The MOU does not stipulate the public benefits of the project, most notably the passenger rail benefits. In addition, the MOU appears to indicate that any additional capacity generated as a result of the project will be reserved for UP and BNSF.
- The final note in Exhibit C, “Estimated Project Schedule and Proposed Funding Plan Summary,” of the MOU, states that if the Southern California Railroad Authority (SCRRA) wants to commence the operation of additional passenger trains on BNSF’s San Bernardino Subdivision, SCRRA or its member agencies will be required to pay for 84.6% of BNSF’s costs related to the *Colton Crossing Project*.
- Exhibit F, “Description of Projected Public Benefits,” of the MOU does not include the current conditions for safety, congestion reduction, and emissions reduction, which are required to establish the baseline to measure project benefits.
- Section F-2 of Exhibit F, “Description of Projected Public Benefits,” of the MOU states “the completion of this project may provide opportunities for potential future services along the Union Pacific network trackage (subject to other capacity improvements). Such future services are subject to requirements in any applicable agreements or future negotiations between Union Pacific and the interested service parties.” This section appears to reiterate that no additional public passenger rail capacity benefits are provided as a result of the public investment in this project.
- Exhibit G, “Description of Supplemental Funding Plan,” of the MOU states “the railroads may seek reimbursement from sources other than TCIF or other funding for all or part of the Project costs required to be paid by the railroads. Such reimbursement or other funding could include, without limitation, contractual contribution from the owner/joint freight operator of the corridor, a tenant passenger or commuter operator, or state or federal non-TCIF grants.” This section appears to allow the railroads to charge public passenger or commuter rail agencies for the costs related to the *Colton Crossing Project*. Given the potential public investment in this project and the substantial private benefits to UP and BNSF that this project will provide, it appears counterintuitive that the railroads would be allowed to recover their investment in the project from other public agencies.

Commission staff also reviewed whether the Project Baseline Agreement for TCIF Project 79: *Colton Crossing Project* met the requirements for submittal under AB 268 (Chapter 756, Statutes of 2008). AB 268 requires the Commission to determine whether the *Colton Crossing Project* meets the requirements or delivery schedule contained in its Project Baseline agreement when reviewed by the commission no later than March 2010. As the executed Project Baseline Agreement was not submitted or approved by the Commission prior to the March 2010 review by the Commission, Commission staff has determined that the project is not in compliance with the requirements of AB 268. This determination takes into account the fact that the Legislature, when passing AB 268,

made reference to Commission policies and requirements as outlined in the Program's guidelines and adopting resolutions. Staff considers that the March 2010 review described in AB 268 is intended to be made against the project baseline agreement that would have been in place by September 2008, as required in the Program's adopting resolution.