

Memorandum

To: Chair and Commissioners

Date: April 8, 2008

From: JOHN F. BARNA, JR.

File: Items 14 & 34

ACTION

Subject: Trade Corridors Improvement Fund Program Adoption

ISSUE: Should Staff recommendations for programming the Trade Corridors Improvement Fund (TCIF) be adopted by the Commission?

RECOMMENDATION: Commission Staff recommends that the Commission adopts the TCIF program of projects as recommended by Staff in the attached document, and as discussed below.

DISCUSSION: As discussed at the March 2008 Commission meeting, the Commission received 84 nominations consisting of 107 individual projects, totaling \$4.1 billion of TCIF funding requests. Commission Staff reviewed the nominations and applied the screening and evaluation criteria included in the adopted program guidelines. Staff reviewed each nomination individually and on its own merits. During the nomination review process, Staff also retained the services of a private consulting team specialized in the transportation and environmental fields. The consulting team assisted Staff in conducting a project-level qualitative assessment of air quality information contained within individual project nominations.

After the initial review, Staff developed findings for each nomination and discussed these findings with individual project sponsors and the corridor regions. An updated list of findings (TCIF Nominations – Updated Review Findings) is attached which reflects initial and updated Staff comments. Since the initial comments were shared with project sponsors, Staff has received additional information to address the findings and Staff has completed a partial review of this information and adjusted the findings, as appropriate. The attachment reflects whether Staff's initial comment was resolved, in-progress, or remains unresolved. Staff regrets to report that resolution of some of these comments has not been possible due to several factors, some of which are related to the volume of additional information received since the requests were made, availability of the consulting team, and the fact that many of the unresolved issues are related to the development of the memorandum of understanding between the railroad and public entities. Staff intends to address those items that remain in-progress or unresolved as we move into the baseline agreement phase of the program development.

Staff's recommendations, presented to the Commission on March 12, 2008, have essentially remained the same with a few minor exceptions: where a single grade separation project was substituted by another at the request of SANBAG and, some total project costs and TCIF request levels as well as delivery dates were adjusted at the request of project nominating agencies. The attached spread sheet presents a revised program that proposes to invest \$3.088 billion of TCIF on 79 projects. The total value of these projects is estimated at approximately \$8.430 billion resulting in an average match of 1.7 to 1.0. Staff recommends that the Commission adopts the proposed TCIF program of projects and direct Staff and nominating agencies to proceed with the development of baseline agreements for related projects. The deadline for the execution of baseline agreements is expected to occur within 90 days from the adoption date of the program. Commission Staff recommends that executed baseline agreements be presented to the Commission at its July 2008 meeting (July 23 & 24), with some exceptions as discussed further in this document.

Since the March 2008 meeting, Staff has had several productive meetings with representatives of the Union Pacific Railroad (UP) and the Burlington Northern and Santa Fe Railway Company (BNSF), as well as representatives of the corridor region agencies, many of the nominating agencies, and environmental and community stakeholders. As an outcome of these meetings, Staff has identified several critical issues that we believe should remain in play as we continue to develop the next steps of this program:

1. Construction to Commence by December 31, 2013 – In its initial review, Commission Staff has identified several projects that could be at risk of being able to commence construction by December 31, 2013, due to many factors. These factors include, but are not limited to, the level of scoping documents available for some projects, the type of the environmental documents and the planned duration to obtain environmental clearance, the milestone dates and overlapping of project development activities, and the availability of commitments with respect to start-up concepts (short-haul rail, mainline rail and other public-private projects). Based on the nominations received by the Commission on January 17, 2008, only 10 of the 79 recommended projects have achieved the environmental clearance milestone (though some may need an update); and 34 projects have not yet initiated the environmental phase. Staff is concerned that some of these projects may not be able to achieve environmental clearance in time for the remaining pre-construction project development activities to take place by the December 2013 date. Staff recommends that the nominating agencies seriously consider the schedule of their nominated projects which are recommended in this program to initiate the environmental phase earlier than planned. Staff also recommends that the Commission considers only projects that have achieved environmental clearance as a condition of remaining in the program when the program status and funding review takes place in the spring of 2010. Staff is willing to work with nominating agencies during the development of the baseline agreement to address this issue. The following is a list of projects with current delivery plans that indicate environmental clearance occurring in the spring of 2010 or later:

Project Title	Enviro. Start	Enviro. Clearance	Const. Start
I-880 Reconstruction, 29th & 23rd Avenues	Oct-08	Apr-10	Aug-12
SR 91 connect aux lanes	Aug-07	Apr-10	Dec-12
Bay Marina Drive at I-5 At-Grade Improvements	Feb-08	Apr-10	Feb-12
Civic Center Drive at Harbor Drive and I-5	Feb-08	Apr-10	Feb-12
Ports Rail System - Tier I (Pier 400 Second Lead Track)	Jul-06	Jun-10	Jan-12
Avenue 56 Grade Separation	Dec-08	Jun-10	Dec-11
Ports Rail System - Tier	Jan-08	Sep-10	Oct-11
Raymond Avenue Grade Separation	Dec-08	Sep-10	Jan-13
Avenue 66 Grade Separation	Mar-09	Sep-10	Sep-12
ACE Lenwood Grade Separation	Oct-08	Oct-10	Apr-12
4 West Crosstown Freeway Extension Stage I	May-08	Nov-10	Jun-13
10th Avenue at Harbor Drive Grade	Feb-08	Dec-10	Jul-13
South Line Rail Improvements/San Ysidro Yard Expansion	Jun-09	Dec-10	Jan-13
I-15 Widening and Devore Interchange	Aug-08	Aug-11	Nov-13
32nd Street at Harbor Drive	Feb-08	Aug-11	Jul-13

2. Baseline Agreement – The development of the baseline agreement will be initiated upon adoption of the program. The baseline agreement will set forth the proposed scope, expected benefits, delivery schedule, and project cost and funding plan. Since only a handful of these projects have in fact achieved the required environmental clearance, Staff must remind the Commission that the selection of the preferred alternative has yet to take place, and therefore, the scope of the project can only be assumed at this point. Staff recommends that nominating agencies document the assumptions they have made in identifying the project’s expected benefits, the schedule and overall cost. Staff also recommends that for those projects lacking an initiation document, a project study report or equivalent should be developed in time for the baseline agreement. This document may prove critical to the viability of the project as it moves into the remaining project activities. Staff must note that the executed baseline agreement will become the basis by which accountability will be measured. Future amendments to scope, benefits, schedule and cost will require Commission’s approval, even for preconstruction phases of work.

3. Supplemental Funding and the 1:1 Match – The Bond Act mandates that the Commission allocates TCIF to projects that have identified and committed supplemental funding from appropriate local, federal, or private sources. Several project funding plans included references to unsecured or future revenue sources (e.g., future containers fees, future toll authority, railroad contributions, PUC 190 funds, etc.). Staff recommends that the Commission requires that funding plans presented in the executed baseline agreement must have identified and committed sources of funds. Commitments in the form of regional board or local commission

actions or resolutions are considered acceptable. Nominating agencies could substitute committed local, federal or private funds with newly generated local funds when these funds become available.

4. Air Quality & Emissions Reduction – Staff has not completed the evaluation of air quality impacts at the local levels, but all recommended projects have passed the screen at the regional levels. Since the March Commission meeting, nominating agencies have provided additional information that Staff, along with its consultants, are currently reviewing to identify which of the projects could have a potential impact at the local level. Those that are identified as such will be flagged for conditional language that will be included in the project baseline agreement. As discussed on several occasions, project level impacts and mitigation plans are best addressed during the environmental phase of the project, which is the first project component to be executed after program adoption. Available project level details, including the selection of a preferred alternative, project specific analysis and sensitive receptor types and locations, as well as possible mitigation measures, are an outcome of the environmental process. Sufficient details are not available at this point in time to make conclusive findings as to the magnitude of the impact or acceptable mitigation strategies. Staff further believes that the types of environmental studies, the identification of impacts, and the acceptability of related strategies must be resolved at the project level with jurisdictional and regulatory entities that have such responsibilities under state and federal laws and regulations (CEQA or NEPA). Staff will, however, monitor the progress of the environmental process, and will require the nominating agency to demonstrate concurrence to recommended mitigation strategies prior to a request for TCIF allocation.
5. Over-programming – The over-programming in the TCIF relies on the availability of future revenue sources (e.g. additional federal funding, user fees, tolls, etc.) to supplement monies available from the Bond Act and the State Highway Account. The proposed TCIF program of projects includes an over-programming level of approximately \$650 million. Should this level of funding not materialize, corridor region agencies and nominating agencies will have to re-calibrate their nominated programs or projects to fit within available funding levels. Future program calibrations due to availability of funds will be coordinated with corridor programming ranges included in the TCIF program guidelines and the adopted TCIF program.
6. Public-Private Benefits and Memoranda of Understanding (MOU) – MOU development and negotiations with respect to public and private benefits as they relate to projects that involve investments in rail facilities (mainline rail and short haul or intermodal facilities) have yet to begin in a comprehensive manner.

Staff recommends extending the deadline for the execution of baseline agreements for the following facilities until the Commission's September 2008 meeting (24 & 25) to allow ample time to develop the required MOU between all affected parties:

- Martinez Subdivision Rail Improvements
- Tehachapi Trade Corridor Rail Improvement Project

- Track and Tunnel Improvements at Donner Summit
- Colton Crossing Flyover
- Sacramento Intermodal Track Relocation
- Shafter Intermodal Rail Facility
- San Joaquin Valley Short Haul Rail/Inland Port Project (Crows Landing)

Staff acknowledges that the following rail facilities are publicly owned, and that some shared-use agreements may already exist. Therefore Staff is prepared to consider baseline agreements for these projects at the July 2008 Commission meeting, assuming any necessary supplements to those existing agreements are executed by the July deadline. Shared-use and freight benefits should be addressed in those supplements:

- New Siding on the Antelope Valley Line For Freight Trains
- South Line Rail Improvements/San Ysidro Yard - Yard Expansion Project
- South Line Rail Improvements/San Ysidro Yard - Mainline Improvement
- LOSSAN N Rail Corridor - Sorrento to Miramar Double Track Project – Ph I

7. Grade Separation Projects – A master agreement or memorandum of understanding for grade separation projects will be required to accompany the baseline agreement. As a result of discussions with the rail agencies and nominating agencies, Staff believes that such programmatic agreements can be executed within the period between program adoption and the baseline agreement deadline of the July 2008 Commission meeting. These agreements could prove critical to all elements of the project baseline agreement and could affect the scope, cost and schedule of the proposed improvement. Many of the proposed grade separations are located along corridors that either UP or BNSF, or both, own and operate. Many of the grade separations propose alternatives that would require the temporary relocation of railroad tracks to construct a vehicular roadway below tracks that must remain in full operation during construction. Coordination with railroad agencies is extremely critical as this may have detrimental a effect on the proposed scope, the cost to construct temporary facilities for the railroad, or the level of financial commitments expected from the railroad agency, as well as the delivery schedule. Consequently, review durations required by the railroad agencies should be reflected in master agreements and consequently in delivery plans of individual projects. The proposed TCIF program includes 29 grade separation projects in four counties in Southern California (Los Angeles County - total 3, Orange County – total 7, Riverside County – total 12, and San Bernardino County – total 7) many of which could become unable to start construction by December 31, 2013, if these issues are not appropriately considered at this time.

Attachments:

1. Proposed TCIF Program of Projects
2. Proposed TCIF Program Adopting Resolution
3. Proposed TCIF Program – Updated Review Findings