

M e m o r a n d u m

To: CHAIR AND COMMISSIONERS

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Action
Replacement Book Item

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Subject: **AMENDED LETTER OF NO PREJUDICE GUIDELINES TO INCLUDE SENATE BILL 1 PROGRAMS**
RESOLUTION G-17-28, AMENDING RESOLUTION G-16-20

ISSUE:

Should the California Transportation Commission (Commission) approve amendments to the Letter of No Prejudice (LONP) Guidelines to include the Active Transportation Program, Local Partnership Program, Trade Corridor Enhancement Program, and Solutions for Congested Corridors Program as authorized by passage of Assembly Bills (AB) 115 (Chapter 20, Statutes 2017) and 135 (Chapter 255, Statutes of 2017)?

RECOMMENDATION:

Staff recommends that the Commission adopt the amended LONP Guidelines in accordance with Resolution G-17-28 (Attachment A).

BACKGROUND:

An approved LONP by the Commission allows the implementing agency to advance a project by expending its own funds (incur reimbursable expenses) for any component of the project prior to allocation.

The Commission was previously authorized by statute to adopt guidelines for approval of LONPs for Proposition 1B Programs, the Proposition 1A Program, and the Transit and Intercity Rail Capital Program. The LONP Guidelines were last amended in May 2016.

Recent passage of AB 115 and AB 135, signed by the Governor on June 27, 2017 and September 16, 2017, respectively, amended Sections 2382, 2033, 2192, and 2396 of the Streets and Highways Code, authorizing approval of LONPs to projects programmed or otherwise approved for funding from the Active Transportation Program, Local Partnership Program, Trade Corridor Enhancement Program, and Solutions for Congested Corridors Program.

Attachment A: Commission Resolution (Resolution G-17-28)
Attachment B: Letter of No Prejudice Guidelines

CALIFORNIA TRANSPORTATION COMMISSION
Letter of No Prejudice (LONP) Guidelines

Resolution G-17-28
Amending Resolution G-16-20

- 1.1 WHEREAS the Local Partnership, Trade Corridor Enhancement and Solutions for Congested Corridors Programs were created by Senate Bill (SB) 1 (Chapter 5, Statutes of 2017) to provide incentives to counties to enact taxes and fees to fund transportation needs, provide grants to fund infrastructure improvements along corridors that have a high volume of freight movement, and provide grants to make improvements designed to reduce congestion in highly traveled corridors respectively, and
- 1.2 WHEREAS the Active Transportation Program was created by Senate Bill 99 (Chapter 359, Statutes of 2013) to encourage increased use of active modes of transportation, such as biking and walking, and
- 1.3 ~~1.2~~ WHEREAS the Transit and Intercity Rail Capital Program (TIRCP) was created by Senate Bill 862 (Chapter 36, Statutes of 2014) to provide grants from the Greenhouse Gas Reduction Fund to fund capital improvements and operational investments that will modernize California's transit systems and intercity, commuter, and urban rail systems to reduce emissions of greenhouse gases by reducing vehicle miles traveled throughout California, and
- 1.4 ~~1.3~~ 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 the issuance of \$19.925 billion in State general obligation bonds for specific transportation programs intended to relieve congestion, facilitate goods movement, improve air quality, and enhance the safety of the state's transportation system, and
- 1.5 ~~1.4~~ WHEREAS the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, approved by the voters as Proposition 1A on November 4, 2008, authorized the California Transportation Commission (Commission) to program and allocate the net proceeds received from the sale of \$950 million in bonds for capital improvements to intercity rail lines, commuter rail lines, and urban rail systems that provide direct connectivity to the high-speed train system and its facilities, and
- 1.6 ~~1.5~~ WHEREAS Assembly Bill 135, signed by the Governor on September 16, 2017, Assembly Bill 115, signed by the Governor on June 27, 2017, Senate Bill 9, signed by the Governor on October 9, 2015, Senate Bill 1371, signed by the Governor on September 23, 2010, and Assembly Bill 672, signed by the Governor on October 11, 2009, authorize approval of a Letter of No Prejudice (LONP) for projects programmed or otherwise approved for funding from the **SB 1 Local Partnership, Trade Corridor Enhancement, Solutions for Congested Corridors; Active Transportation Program; TIRCP; Proposition 1A; and Proposition 1B programs respectively, and**
- 1.7 ~~1.6~~ WHEREAS the LONP allows the regional or local agency to expend its own funds and incur reimbursable expenses for any component of a project prior to actual allocation if programmed in the **SB1 Local Partnership, Trade Corridor Enhancement, Solutions for Congested Corridors; Active Transportation Program; TIRCP; Proposition 1A; and Proposition 1B programs, and**
- 1.8 ~~1.7~~ WHEREAS approval of LONPs for **SB 1 Local Partnership, Trade Corridor Enhancement, Solutions for Congested Corridors; Active Transportation Program; TIRCP; Proposition 1A;**

and Proposition 1B projects will benefit both the State and regional agencies in allowing projects to begin construction that otherwise would be delayed, and

1.9 ~~1.8~~ WHEREAS the legislation authorizes the Commission to adopt guidelines to establish a process to approve LONPs for projects programmed or otherwise approved for funds from the **SB1 Local Partnership, Trade Corridor Enhancement, Solutions for Congested Corridors; Active Transportation Program; TIRCP; Proposition 1A; and Proposition 1B** programs.

2.1 NOW THEREFORE BE IT RESOLVED that the Commission adopts Resolution G-17-28, amending Resolution G-16-20, and

2.2 BE IT FURTHER RESOLVED that the purpose of these guidelines is to identify the Commission's policy and expectations for the LONP 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 directs staff to post these guidelines on the Commission's website and requests that the Department of Transportation assist Commission staff in making copies available to eligible implementing agencies.

**Letter of No Prejudice (LONP)
Guidelines**

Active Transportation Program, Local Partnership Program, Trade Corridor Enhancement Program, Solutions for Congested Corridors Program, Transit and Intercity Rail Capital Program, High-Speed Passenger Train Bond Program and Proposition 1B Program

1. Authority and Scope: Streets and Highways Code Chapter 8 (commencing with Section 2382) added by Chapter 20 (AB 115) of Statutes of 2017 (Active Transportation Program), and Streets and Highways Code Chapter 2 (commencing with Sections 2033, 2192 and 2396) added by Chapter 255 (AB 135) of Statutes of 2017 (Local Partnership Program, Trade Corridor Enhancement Program and Solutions for Congested Corridors Program) and Public Resources Code Section 75225 added by Chapter 710 (SB 9) of the Statutes of 2015 (Transit and Intercity Rail Capital Program), Streets and Highways Code Chapter 20.5 (commencing with Section 2704.75), added by Chapter 292 (SB 1371) of the Statutes of 2010 (Proposition 1A), and Government Code Section 8879.501, added by Chapter 463 (AB 672) of the Statutes of 2009 (Proposition 1B), authorize the California Transportation Commission (Commission) to adopt guidelines to establish a process to approve a Letter of No Prejudice (LONP) for one or more projects or project components that the Commission has programmed or otherwise approved for funding from the following programs:

- **Active Transportation Program**
- **Local Partnership Program**
- **Trade Corridor Enhancement Program**
- **Solutions for Congested Corridors Program**
- Transit and Intercity Rail Capital Program
- Proposition 1A Program
- The following Proposition 1B Programs:
 - Corridor Mobility Improvement Account
 - State Route 99 Account
 - Trade Corridors Improvement Fund
 - Local Bridge Seismic Retrofit Account
 - Traffic Light Synchronization Program
 - State-Local Partnership Program Account

~~The LONP applies only to the TIRCP, Proposition 1A or Proposition 1B funds programmed or otherwise approved for the project.~~

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

2. Intent of LONP: A regional or local entity that is a lead applicant agency under one of the programs referenced in Section 1 may apply to the Commission for an LONP for the programmed project. If approved by the Commission, the LONP allows the regional or local agency to expend its own funds (incur reimbursable expenses) for any component of the project. This does not relieve the regional or local agency from the applicable match **or other** requirements of the program.

It is the intent of the Commission to give equal opportunity for available funding to applicants that completed work under an approved LONP, as well as those that require an allocation in order to begin or continue work on a project. The Commission further intends that applicants considering the use of an LONP have the most accurate information available to assess the likelihood of allocation and reimbursement as planned. Applicants proceed at their own risk, as reimbursement of the LONP is dependent on availability of funding from **the respective program(s). ~~TIRCP, Proposition 1A bond, or Proposition 1B bond funds.~~**

3. Submittal of LONP Request: LONP requests shall be submitted to the Department of Transportation (Department) by the applicant in accordance with established timeframes for project amendments to be placed on the agenda for timely consideration by the Commission.

In order to be considered by the Commission, an LONP request shall:

- Be signed by a duly authorized agent(s) of the applicant agency and implementing agency if different.
- Include all relevant information as described in Section 5.
- Indicate that the implementing agency is ready to start work on the project component covered by the LONP request.
- Have a full and committed funding plan for the component covered by the LONP request.
- Indicate the anticipated schedule for expenditures and completion of the component.

4. Content and Format of LONP Request: The Commission expects a complete LONP request to include, at a minimum, the following information as applicable:

- A letter requesting LONP approval, including a summary of the **required** ~~following information as applicable~~ **submitted with the request.**
- Documents needed for obtaining concurrent Commission approval of any needed actions such as a project programming request or project/baseline agreement amendment, in accordance with appropriate program guidelines and standards.
- Alternate local funding source(s) that will be substituted ~~for the TIRCP, Proposition 1A bond or Proposition 1B bond funds~~ and a demonstration of commitment of those funds (e.g., resolution, minute order) from its policy board. Funds allocated by the Commission and/or reimbursed through Caltrans cannot be used as an alternate local funding source.
- An expenditure schedule for the component covered by the LONP.

- If jointly funded with funds from the State Transportation Improvement Program (STIP), a STIP allocation request or STIP AB 3090 request must be included.
- LONP requests for construction must include documentation for Commission review of the final environmental document, as appropriate, and approval for consideration of future funding.

5. Review and Approval of LONP Requests: The Department will review LONP requests for consistency with these guidelines and place the requests on the Commission meeting agenda. The Commission will consider requests for LONPs that meet the guidelines, except for LONP requests for components jointly funded with funds from the STIP, which shall be dependent upon concurrent approval of the STIP allocation or STIP AB 3090 request.

An LONP will only be granted for work consistent with the approved project's scope, schedule and funding.

Upon Commission approval of an LONP, the Department will execute a cooperative agreement or Master Agreement/Program Supplement with the implementing agency. Although the agency may begin work once the LONP is approved, an agreement must be in place before the Department can provide reimbursement for eligible project expenditures.

6. Initiation of Work: The project component covered by an approved LONP should be ready to proceed to contract award (or equivalent) once the LONP is approved. The agency shall report to the Department within four months following LONP approval on progress in executing agreements and third-party contracts needed to execute the work.

7. Monitoring Progress of Projects with a LONP: The agency with an approved LONP shall report on progress to date in accordance with the applicable bond program or TIRCP guidelines. This report should include expenditures to date, work completed, problems and issues with the project, and any funding plan updates for the project.

8. Project Changes: Proposed changes in funding, schedule or project scope must be approved by the Commission for Proposition 1A, 1B, projects or the California State Transportation Agency for TIRCP projects in accordance with the applicable program guidelines, including a concurrent LONP amendment if necessary.

9. Diligent Progress and Rescinding a LONP: If progress reports from an agency on a project with an approved LONP show that diligent progress is not being made in completing the project, the Commission may request that the agency explain its lack of progress. The Commission may rescind the LONP or may direct the agency to demonstrate diligent progress within the next reporting period. ~~If the Commission finds the agency is not pursuing project work diligently, the Commission may rescind the LONP.~~ If an LONP is rescinded, an allocation to reimburse expenditures to date is at the discretion of the Commission.

10. Allocations for LONPs: Upon completion of the component covered under an LONP approved by the Commission, the agency may send a request to the Department to have its LONP reimbursed with an allocation by the Commission. The agency shall identify the source(s) and expenditures of all funds used in completing the component for which the agency is seeking an allocation from the Commission. The agency must show the applicable match for the funds, if required for the project. The Department will place the request for allocation on the agenda for timely consideration by the Commission.

If sufficient ~~TIRCP, Proposition 1A bond, or Proposition 1B bond~~ allocation capacity exists, an agency with a partially completed component may request an allocation for reimbursement of eligible costs to date and to convert the remaining LONP to a standard allocation for periodic reimbursement for the remainder of the component. The Commission may assign a lower priority for ~~TIRCP, Proposition 1A bond, or Prop 1B bond~~ allocation to these LONP conversion requests, depending on funding availability.