

# Memorandum

To: Chairman and Commissioners

Date: July 5, 2000

From: Robert I. Remen

File No: K52.1  
BOOK ITEM 4.4  
ACTION

Ref: **Revised Transportation Enhancement Activities (TEA) Program Design**

**Issue:** Should the Commission increase flexibility in reprogramming funds in the Transportation Enhancement Activities (TEA) program, to allow additional funds to be added into other parts of the state's share rather than only into Conservation Lands?

**Recommendation:** Staff recommends the Commission decide among four options, represented in paragraph #30 of a revised policy resolution (that also cleans up cross references and obsolete language).

**Background:** Enactment of TEA-21 in June 1998 extended the federal TEA program through FFY 2003. Before 1998, which means prior to the STIP reforms of SB 45, federal TEA funds were programmed competitively through the STIP. Following several months of discussion and negotiation with parties interested in the TEA program, the Commission redesigned the way the TEA program was handled in California, via Resolution #G-98-20 adopted in October 1998.

The new TEA program design is more or less modeled on SB 45, but outside the STIP. In summary, it:

- leaves all remaining old TEA projects from ISTEPA in the STIP, to be delivered for Commission allocation or deleted by September 2000;
- assigns 75% of new TEA funds (\$272 million) as regional shares, for local assistance projects;
- assigns the remaining 25% of new TEA funds (\$91 million) to a state share, divided into three parts: a Caltrans share at \$40 million, and a State Transportation Enhancements (STE) program at \$40 million and Conservation Lands program starting at \$11 million through the Resources Agency;
- allows small rural counties to exchange their TEA fund shares back to the state each year, along the model of federal local assistance exchange from SB 1435 of 1992;
- directs any funds from project savings, deleted projects, or rural county exchange into the state's share, to go to Conservation Lands, with the intention to bring that part of the state program up to par with the two other parts; and
- expresses Commission intent that Caltrans increase its local assistance staffing and rural planning funding, to be funded by transferring up to \$20 million of federal TEA funds into transportation funds (as allowed in TEA-21) if necessary.

**Status:** As of June 2000, only ten old TEA projects for \$5.9 million remain to be delivered, all due by August 2000; funding from any of these projects that fail delivery will revert to Conservation Lands in September, an amount that staff now expects to come to \$4.4 million. Many regional agencies have begun programming from their shares, and a scattering of regional projects have been delivered. Ten rural counties have been exchanging their TEA funds back to the state, amounting to about \$5 million over three years.

On the state share side, Caltrans has programmed one round from its share for \$12 million, and a second round for about \$21 million is pending this month, with a third round for about \$10 million expected next year. The Commission programmed the first round of STE for \$12 million in June, with a second round for \$28 million due in Fall 2001. The Commission programmed a first round of Conservation Lands in December 1998 for \$11 million, and has since programmed two more rounds using \$32 million in savings, with up to an additional \$9 million pending a final accounting of savings in September 2000. Thus, the three parts of the state share have roughly reached par, with \$41 million for Caltrans' share, \$40 million for STE, and at least \$43 million and perhaps as much as \$52 million available for Conservation Lands.

The Commission is awaiting at least \$5.1 million more in TEA project delivery by August, from any of the program parts, to use the last remaining old TEA funds from the ISTEA era due to expire on September 30. Beyond the TEA program, Caltrans has through its own budget increased its local assistance staffing by 50%, starting in 2000, and doubled rural county planning funds, starting in 2001, so transfer of TEA funds as contemplated for these purposes is no longer necessary.

**Options:** The Commission's 1998 TEA program design provided that any savings from elsewhere in the TEA program would return to the state share to augment Conservation Lands until it reached par at \$40 million with the other two parts of the state share. That has now happened, with Conservation Lands funding at \$43 million, and perhaps as high as \$52 million depending on further project failures. Now that Conservation Lands has at least reached par, the Commission can reconsider whether all further savings that come back into the state share should continue to go only into Conservation Lands, or whether good opportunities for further state programming might also come from either the Caltrans share or the STE program.

Staff can lay out four options for Commission policy (with hybrid combinations possible too):

1. **Full flexibility:** whenever savings become available, the Commission could program into any of the three parts of the state program, wherever the best opportunities for further programming presently were found;
2. **Directed flexibility:** the Commission could decide in advance into which part(s) of the state program to direct the next amount of savings;
3. **Maintenance of parity:** the Commission could direct future savings into whichever part of the state program had received the least total funding up to that time, to try to keep the three parts approximately at parity; or
4. **Continue funding Conservation Lands:** the Commission could continue the past policy to direct all savings to further programming in Conservation Lands.

**Discussion:** Among all the various kinds of TEA projects, Conservation Lands projects, which comprise land purchases from willing sellers, have generally been delivered the most quickly and used large chunks of funds. That has been important as the September 2000 deadline loomed for ISTEA-era TEA funds to expire, and other projects to which the funds were programmed failed delivery. However, the next deadline, when TEA-21-era TEA funds will expire, does not come until September 2006, a long way off.

For the past couple of years, about 80% of savings have come from old ISTEA-era TEA projects failing to be delivered. After September that major source of savings ends, since the Commission will cancel all remaining ISTEA-era TEA projects undelivered at that time. Beyond September, further TEA funds may dribble into the state share on an ad hoc basis, as rural counties exchange their funds each year, or savings accrue from projects built for less than their programmed cost, or STE or Caltrans projects fail (regional share savings now stay in the region). The amounts coming in will probably be small, in the hundred-thousands range, enough to fund only

relatively small projects, whereas the typical Conservation Lands project has been large, with only 4 out of 22 projects under a million dollars.

These two factors, the loss of urgency for replacement project delivery and the mismatch between typical Conservation Lands project size and the amounts of future funding expected to be available, leads to the conclusion that reexamination of the policy to add all savings only into Conservation Lands is now timely. In addition, Commission staff has heard complaints from sponsors of other kinds of TEA projects that Conservation Lands has now gotten more than its fair share in competitive isolation.

The general notion that maximum flexibility yields the best results, plus the limited opportunities offered by relatively small amounts of funding, would seem to favor the full flexibility option. However, this option presents problems of subjectivity and arbitrariness. The Commission may have trouble deciding effectively among available enhancement project choices, especially when the projects are from widely different enhancement categories such as scenic beautification or historic preservation, given that its expertise lies in transportation.

The directed flexibility and maintenance of parity options offer two ways around these problems. Directed flexibility would seem attractive in at least two circumstances. First, if another round of STE or Caltrans programming were coming due soon, and the Commission had only a small amount of savings to work with, the most effective direction might come from adding the savings to extend programming at the margin in the upcoming round. Second, the Commission might have a particular policy it might want to test or pursue. For example, staff reported at the January meeting about the option to use TEA funds to add an environmental component to transportation projects to help expedite project delivery, as has been done in some Eastern states, an option the Commission might want to consider and test through Caltrans' share. The maintenance of parity option would not provide such choices, but would establish a clean state policy up front insulated from subjectivity, arbitrariness, and unfair division.

The Commission discussed a change in policy at the March meeting, but decided to wait to verify that Caltrans' next budget indeed continued the 50%-higher funding level for local assistance staff from last year, and included a new 100% increase in state funds for rural county planning. Both have made it into Caltrans' FFY 2001 budget. The general sense of the March discussion favored changing the current policy that plows all savings into Conservation Lands, with individual Commissioners speaking in favor of both full flexibility and directed flexibility, and no opposition heard to either. The Commission could also choose a hybrid policy, allowing for directed flexibility if the Commission wanted, with a fallback to either full flexibility or to maintenance of parity if the Commission had no reason at the time to preselect the next direction.

Thus staff has brought back a modified version of the draft resolution discussed in March, with options laid out in paragraph #30, for action this month. **The attached resolution would replace the Commission's October 1998 TEA program design Resolution #G-98-20, amending it in three ways, to:**

- change the policy for use of further funds coming to the state share, as the Commission directs;
- eliminate obsolete and confusing references to the potential transfer of federal TEA funds to fund increases in Caltrans' local assistance staffing and rural planning, which are now moot; and
- reorganize to improve clarity and eliminate now-irrelevant references in the original resolution, for example to the transition between the prior 1996 STIP and post-SB 45 1998 STIP.

The attached policy resolution shows substantive changes with strikeouts of prior language and bold print, highlighted within substantial organizational changes, which for clarity and focus are not delineated.

# DRAFT

## CALIFORNIA TRANSPORTATION COMMISSION

### RESOLUTION # G-00-\_\_

Supersedes and Replaces Resolution # G-98-20

## FEDERAL ENHANCEMENT (TEA) PROGRAM UNDER TEA-21

### Commission Objectives

- Allow agencies with greater expertise and interest in TEA projects – regions, state resources agencies, Caltrans – to take a larger role in TEA project decisions.
- Minimize the number of TEA projects in the STIP, since most TEA projects serve a predominately local interest.
- Maximize regional discretion and allow regions to streamline programming.
- Use TEA funds to add onto state highway projects, to **produce projects with joint environmental and transportation purposes** or take advantage of particular community or environmental enhancement opportunities.
- Preserve a state-level environmental enhancement program for projects of significant statewide interest ~~and free up state funds for rural county planning and Caltrans' local assistance.~~
- Augment transportation mitigation banks with larger blocks of scenic land along transportation corridors, to build up environmentally-valuable contiguous habitat preserves.
- Expedite delivery of TEA projects.
- Ensure that regions not wanting or able to use TEA funds can exchange them, to the state or among themselves, and take steps to prevent lapse of any federal TEA funds.

### TEA Program Framework

1. The federal TEA program requirement is estimated at \$410 million through FFY 2004, with \$346 million from TEA-21 through FFY 2003 and an estimated \$64 million beyond TEA-21 for FFY 2004. Regional and state agencies may program up to seven years of TEA funds, from the six years of TEA-21 (FFY 1998 through FFY 2003) plus FFY 2004, with the understanding that the increment for FFY 2004 depends on Congress extending TEA beyond TEA-21 into the next federal transportation act that follows, and so is not guaranteed funding. The TEA Program will parallel the state-local split called for in the STIP, with programming divided 75% to regional shares and 25% to a state share, which yields \$308 million for regional shares (an increase of 30% over the 1998 Fund Estimate and 43% over ISTEA funding levels) and \$102 million for the state share.

2. The Commission intends broad flexibility for regional shares. All regional shares will be handled as direct local assistance grant programs, in the manner of Regional STP and CMAQ local assistance, outside the STIP, authorized annually through the State Budget and the Commission's lump sum allocations for local assistance programs.
3. The Commission intends to divide the state share into two parts. The Commission will assign \$40 million of the state share (**or more as funds may be transferred**) to Caltrans through the SHOPP, to be used as enhancements with state highway projects or to implement state plans for enhancements. The Commission will make available up to \$80 million of the state share (**or more as funds may be transferred**) as a resources share, for a statewide transportation enhancements program and a conservation lands program, carried out through authority of the state Environmental Enhancement & Mitigation program, using guidelines modified to fit better with federal TEA program requirements.

~~The Commission will transfer federal TEA funds from the state environmental enhancement program so as to free up at least \$10 million, and preferably as much as \$20 million depending on the future of the state Environmental Enhancement & Mitigation program, in state funds for rural planning and Caltrans' local assistance.~~

4. The Commission will allow small counties (less than 200,000 urban population) that decide not to use their full TEA shares to exchange TEA funds to the state for state transportation funds, modeled on the exchange of other federal funds described in SB 1435 of 1992, with the TEA funds to be added into the state share **as described below** ~~for the conservation lands program~~. Other larger counties that do not have statutory authority for state funds exchange may trade TEA funds among themselves.

### **Regional TEA Shares**

5. The Commission issued a provisional 7-year estimate of regional TEA shares, in Resolution #G-99-16 adopted June 8, 1999, subject to actual apportionments released annually by Congress and the Federal Highway Administration. Estimated regional TEA shares may change year by year until 2003, and 2004 is trend-line projection only; in particular federal budget surpluses and the 2000 national census may affect federal funding levels and formulas.
6. Regions may program their full 7-year TEA shares, and, in keeping with overall local assistance programming practice, let late delivery determine which projects may not receive funding by 2003. Any region that does program its full estimated 7-year TEA share early runs two risks: having to backfill with other funds or delete programming if its year-by-year TEA share should end up smaller or if Congress declines to extend the TEA program beyond 2003, or having to deal with a small incremental remnant amount if its TEA share should end up larger.
7. The Commission expects regions to split programming over at least two TEA rounds, with a first round one committing one-third to one-half of the regional TEA share by 1999, and a second one by about 2001, but smaller regions with less than \$1 million in total TEA share may find it more practical to program all in one single round.

8. A regional agency may program any type of TEA project eligible under federal law, using its own choice of time schedule, programming policies, application forms, number of programming rounds, etc. Caltrans will develop guidelines and an application form for use by regions that choose to do so.
9. The region would retain and reprogram regional TEA shares if new regional TEA projects subsequently fail.

**State TEA Share: Caltrans Share**

10. Caltrans may use its TEA share to fund enhancements added into SHOPP or STIP projects, or to implement state plans (prepared by Caltrans in cooperation with other state agencies) for TEA activities through the SHOPP. **The Commission intends that the Caltrans share be used for Caltrans' own projects, not for local assistance projects.**
11. Caltrans will use guidelines approved by the Commission on January 14, 1999 to govern the process to be used and choice of projects for its TEA share.
12. The Commission intends that Caltrans program funds from its TEA share by SHOPP (or STIP) amendment, on an ad hoc schedule, using standard amendment procedures.
13. The funding for Caltrans' TEA share (\$40 million initially) will be provided to the SHOPP through the fund estimate, but part or all may be exchanged into the STIP for transportation funds.

**State TEA Share: Resources Shares**

14. The Commission intends that the resources share (up to \$80 million initially) be used toward **two** ~~three~~ purposes: a statewide transportation enhancements program and a conservation lands program, consisting of competitive statewide rounds of TEA programming under the general authority for the state EE&M program ~~and transfer to rural planning and Caltrans' local assistance.~~

~~The Commission and Resources Agency will continue the state EE&M program for the next three years, through FY 2000-01, as authorized in SB-45, with \$10 million per year in state funding. If the Legislature fails to extend state funding for the EE&M program beyond FY 2000-01, the Commission intends to replace the program with an analogous program using federal TEA funding at \$10 million per year for three years, starting in FY 2001-02. The Commission would reserve a portion of federal TEA fund transferability for EE&M project types ineligible for federal TEA funding. If the Legislature extends state funding for the EE&M program beyond FY 2000-01, the Commission intends to assign \$20 million in federal TEA funds for a state environmental enhancement program to complement the EE&M program, available for programming after the EE&M program extension becomes law.~~

~~The Commission proposes to transfer \$10 million or \$20 million of federal TEA funds for other federal transportation funds, as allowed in TEA 21, to free up state funds for rural planning and Caltrans' local assistance. If the Legislature extends state funding for the EE&M program beyond FY 2000-01, the~~

~~Commission intends to assign \$5 million per year for four years (FYs 2000-01 through 2003-04) from transferred federal TEA funds to rural planning and Caltrans' local assistance. If the Legislature fails to extend state funding for the EE&M program beyond FY 2000-01, the Commission intends to replace the program with an analogous 3-year, \$30 million program using federal TEA funding as described above, and only \$5 million per year for two years (FYs 2000-01 and 2001-02) would remain available for transfer.~~

15. With an initial amount up to \$40 million, or more as funds may be transferred, the Commission intends to fund a statewide transportation enhancements program for projects of state interest proposed by state agencies (except Caltrans), federal agencies, and regional, local, and other (private non-profit) agencies with a state agency partner (which may include Caltrans), under guidelines broadened to include all eligible federal TEA categories, in two (or more) rounds of programming.
16. The Commission approved an amendment to add Part C to the state's current Environmental Enhancement & Mitigation program guidelines, dated December 9, 1999, to govern the programming of the statewide transportation enhancements program, to bring in the broader requirements of the federal TEA program, for a first round of programming in Spring 2000.
17. The Commission expects projects proposed for the statewide transportation enhancements program to be reviewed and ranked in an open process designed and managed by the Resources Agency, which would make program recommendations for Commission approval.
18. With an initial amount up to \$40 million, or more as funds may be transferred, the Commission intends to fund a conservation lands program, to preserve large blocks of scenic lands along transportation corridors with high value for habitat conservation, in conjunction with the opportunity for transportation mitigation bank lands for future transportation projects, to be owned and managed by resources agencies.
19. The Commission invites joint applications for scenic conservation lands projects from Caltrans and a public resources agency, including the opportunity for transportation mitigation bank lands to be funded as needed from regular transportation funds plus enhancement acreage to be funded with federal TEA funds; other federal, state, regional, or local agency or private funds may also be included.
20. Conservation lands projects must meet federal TEA eligibility for scenic acquisition, must allow Caltrans an opportunity to enlarge or enhance transportation mitigation bank lands, with the lands to be managed by a resources agency, and require joint approval by the Resources Agency and Caltrans, under general authority of the EE&M program.
21. The Commission approved an amendment to add Part B to the state's current Environmental Enhancement & Mitigation program guidelines, dated December 3, 1998, to govern the programming of the conservation lands program, to bring in the broader requirements of the federal TEA program, for a first round of programming in December 1998.

### Exchange of TEA Funds

22. Small counties (less than 200,000 urban population) may exchange TEA funds they do not want to spend for TEA-eligible projects to the state for transportation funds, on an annual basis, modeled on the exchange of other federal funds described in SB 1435 of 1992.
23. All regions may trade transportation and TEA funds among themselves, limited only by the requirement to inform the Commission and Caltrans after such trades have been made.
24. The Commission made available a window from October 1998 through July 1999 during which a small county could exchange all or a part of its FFY 1998 and 1999 TEA funds to the state. Subsequent exchanges are done annually, following distribution of annual federal local assistance apportionments.
25. The Commission expects the state to come out with a net increase in its TEA share after exchanges with small counties and deletion of earlier TEA projects that fail to be delivered (as discussed below), to be added to the state share ~~to augment the conservation lands program, to be used as described above.~~

### Remaining TEA Projects from Earlier TEA Rounds

26. **The Commission intends that all federal funds apportioned for TEA be programmed and spent for TEA purposes.** The Commission and Caltrans will fund all TEA projects, whether existing (1996 STIP) or newly programmed, delivered through September 2000 using the oldest federal TEA funds first, to forestall federal funds lapse. To the extent that old TEA funding (from ISTEPA) may be used for new TEA projects, new TEA funding (from TEA-21) will be freed up for old TEA projects that come in later.
27. Regions may supplement existing (1996 STIP) TEA projects with additional TEA funding, through their TEA programming process, and may seek a STIP amendment to trade one 1996 STIP TEA project of regional interest for another. The state will not add funds to or trade 1996 STIP TEA projects, and will transfer TEA funds from 1996 STIP TEA projects that fail to the state share.
28. The state will track and delete from the program any existing (1996 STIP) TEA projects not delivered by September 2000. Under SB 45 the region retains the program capacity, and may replace the failed TEA project(s) with new TEA projects, or other transportation projects. To the extent that regions use freed-up program capacity for transportation rather than TEA projects, the Commission will add the unused TEA funds to the state share ~~to augment the conservation lands program, to be used as described above.~~
29. ~~The state intends to transfer \$10 million or \$20 million in federal TEA funds to transportation uses for rural planning and Caltrans' local assistance as described above, may transfer in certain circumstances federal TEA funds for state environmental enhancement projects ineligible for the~~

~~federal TEA program as described above.~~ The state may transfer federal TEA funds for other types of federal transportation funds as a last resort, only if lagging delivery of TEA projects threatens lapse of TEA funds near the end of the eligible period for ISTEA (September 2000) or TEA-21 (September 2006) funds.

### **Additional Funding for the State Share**

**30. The Commission expects a continuing but intermittent flow of TEA funds to the state share, from deletion of 1996 STIP TEA projects that fail, savings from previous state share projects, and exchange of small county shares to the state. The Commission**

- **Option 1: from time to time may assign these additional funds into the Caltrans or either part of the resources shares, wherever the opportunity for further programming appears best at the time the funds are available,**
- **Option 2: will designate these additional funds to go into the Caltrans or either part of the resources shares before a next round of programming,**
- **Option 3: will assign these additional funds among the three parts of the state share so as to keep the Caltrans and both parts of the resources shares at parity in total funding levels overall,**
- **Option 4: will direct these additional funds toward an additional round of conservation lands, and may accumulate funds until a sufficient amount is in hand for a round of programming,**

**following an opportunity for public discussion at a regular Commission meeting.**

### **TEA Program Procedures**

31. The Commission adopted guidelines and an application form for TEA projects sponsors, for optional use by any region that wants to. The Commission has also approved guidelines for Caltrans' use of its share, and for the statewide transportation enhancements and conservation lands programs within the Resources Agency's EE&M program guidelines.

32. In the absence of a federal TEA program defined in state law, Caltrans must seek budget capacity each year for expenditure of federal TEA funds through other state programs: SHOPP, EE&M program, and Regional STP local assistance program.

33. TEA program decisions for both regional and state shares must be made in an open public decision process, with an opportunity for parties interested in the TEA program to present comments.

34. Regions must provide Caltrans with certain minimum information relating to all TEA projects:

- 1) two copies of the application for projects to be programmed, so Caltrans (on behalf of FHWA) can review for TEA eligibility before a TEA project can be amended into the Federal STIP, and keep a local assistance program administration file in both a district and the headquarters office;
- 2) its updated regional mailing list periodically, so Caltrans can keep a current statewide mailing list;

- 3) the regional schedule for TEA programming rounds at least two months in advance of the due date for applications; Caltrans will post this information on a web site, as a central location available to interested parties; and
  - 4) a current contact person responsible for TEA programming.
35. Federal TEA funds must be matched, at about 88.5% federal/11.5% match rate. The Commission expects project sponsors to provide the match funding, and to commit to cover any cost increases if projects turn out to be underfunded (particularly for the state environmental enhancement and conservation lands programs). State Highway Account funds can be used for match only for direct transportation projects, for projects qualifying for the SHOPP or STIP, or for TEA projects being built as part of a larger transportation project.
36. Federal innovative and flexible funding methods will remain available for TEA projects, including programmatic match, in-kind match, and federal fund front-loading.

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