

Date: February 25, 2009
W.I.: 1512
Referred by: PAC

ABSTRACT

Resolution No. 3885

This resolution adopts the policy and programming for the American Recovery and Reinvestment Act (ARRA) Program. The policy contains the project categories that are to be funded with FY 2008-09 ARRA program funds for inclusion in the 2009 Transportation Improvement Program (TIP).

The resolution includes the following attachments:

- Attachment A - American Recovery and Reinvestment Act Policy and Programming
- Attachment B - Tier 1 Programming
- Attachment C - Tier 2 Programming

Further discussion of the American Recovery and Reinvestment Act Program is contained in the MTC Executive Director's Memorandum to the Programming and Allocations Committee dated February 11, 2009 and the Deputy Executive Director Memorandum to the Commission dated February 25, 2009.

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RE: American Recovery and Reinvestment Act: Policies and Programming

METROPOLITAN TRANSPORTATION COMMISSION
RESOLUTION NO. 3885

WHEREAS, the Metropolitan Transportation Commission (MTC) is the regional transportation planning agency for the San Francisco Bay Area pursuant to Government Code Section 66500 et seq.; and

WHEREAS, MTC is the designated Metropolitan Planning Organization for the nine-county San Francisco Bay Area region (the region) and is required to prepare and endorse a Transportation Improvement Program (TIP) which includes a list of American Recovery and Reinvestment Act of 2009 (ARRA) funded projects; and

WHEREAS, MTC developed and endorsed a set of Economic Recovery Principles in December 2008; and

WHEREAS, MTC took into consideration the Economic Recovery Principles, Transportation 2030 policies, and investment decisions going into Transportation 2035 to develop a proposed set of projects and program investment areas to be funded with American Recovery and Reinvestment Act Funds, as set forth in Attachment A of this Resolution, incorporated herein as though set forth at length;

WHEREAS, MTC is mindful of the timely use of funds established in the ARRA and has included in Attachment A regional delivery deadlines in advance of the federal deadlines and provisions to quickly redirect any funds from projects not meeting the deadlines to ensure that no funds are lost to the region; and

WHEREAS, using the principles and procedures and criteria set forth in Attachment A of this Resolution, MTC, in cooperation with the Bay Area Partnership, developed a program of projects to be funded with federal Surface Transportation Program and Federal Transit Administration formula funds in the ARRA for inclusion in the federal Transportation Improvement Program (TIP); and

WHEREAS, MTC has identified a set of Tier 1 projects for amendment into the Transportation Improvement Program (TIP), as set forth in Attachment B of this Resolution, incorporated herein as though set forth at length; and

WHEREAS the 2009 TIP will be subject to public review and comment; and

WHEREAS, MTC has identified a set of Tier 2 projects that still need to meet policy and funding agreements set forth in Attachment A as well as a contingency list of projects that could use ARRA funds if projects identified in Attachment B are not able to proceed, as set forth in Attachment C of this Resolution, incorporated herein as though set forth at length; now therefore be it

RESOLVED that MTC approves the policies and programming for the American Recovery and Reinvestment Act, as set forth in Attachments A, B, and C of this Resolution; and be it further

RESOLVED that projects in Attachment B will be amended into in the 2009 TIP, subject to the final federal approval of the amendment; and be it further

RESOLVED that the Executive Director shall forward a copy of this resolution, and such other information as may be required, to the Governor, Caltrans, Federal Transit Administration, and Federal Highway Administration, and to other such agencies as may be appropriate.

METROPOLITAN TRANSPORTATION COMMISSION

Scott Haggerty, Chair

The above resolution was entered into by the Metropolitan Transportation Commission at the regular meeting of the Commission held in Oakland, California, on February 25, 2009

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Attachment A
Resolution No. 3885
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**American Recovery and
Reinvestment Act**
Policy and Programming
For FY 2008-09

American Recovery and Reinvestment Act Policies and Programming

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BACKGROUND

The American Recovery and Reinvestment Act (ARRA) enacted a \$787 billion economic recovery package calling for new spending as well as tax cuts. The ARRA includes \$48 billion for the Department of Transportation. Specifically, the proposal includes \$27.5 billion in Federal Highway Administration funding and \$8.4 billion in Federal Transit Administration funds. It is estimated that MTC will receive roughly \$154 million through the Surface Transportation Program sub-allocated program and \$340 million in Federal Transit Administration formula funds.

The ARRA is meant to jumpstart the economy and as such includes provisions to ensure timely expenditure of funds. The table below summarizes the ‘use it or lose it’ rules.

Type of Funds	Deadlines
STP Sub-allocated Funds	<ul style="list-style-type: none"> ▪ Obligation within 1 Year ▪ All funds expire if not obligated by September 20, 2010
FTA Formula Funds Sections 5307/5309	<ul style="list-style-type: none"> ▪ 50% of Funds: Obligation within 180 days ▪ Remaining Funds: Obligation within 1 Year ▪ All funds expire if not obligated by September 20, 2010

AMERICAN RECOVERY AND REINVESTMENT ACT—REGIONAL INVESTMENT APPROACH

To put this much-needed funding capacity to best use, staff is recommending an approach that complements several regional initiatives already underway as well as the priorities established in the region’s long-range plan and the recently adopted Economic Recovery principles. The proposal is also mindful of the aggressive project delivery requirements.

1. **Focus Investments on Quick-Hitter System Preservation Projects:** Staff is recommending investment of \$388 million of the funds on system preservation projects. This translates into roughly \$270 million to transit for system reinvestment and roughly \$122 million for local streets and road reinvestment.

2. **Make Strategic Investments that Support New Economy:** Staff is also recommending investing nearly \$102 million of the economic recovery funds to support longer-term infrastructure projects that will lay the groundwork for enhanced mobility in the Bay Area and broader national goals such as climate protection and energy security. In this vein, staff is recommending that funding be directed to one regional transit expansion project, the BART Oakland Airport Connector, a project that will help complete train to plane connection. Similarly, staff is recommending that initial investments be made toward improved freeway management systems, dubbed the Freeway Performance Initiative.

3. **Reinforce Commitments to Regional Initiatives and Priorities:** The proposed program of projects continues to advance and reinforce regional commitments and project priorities such as system preservation, the Resolution 3434 Regional Transit Expansion Program, the Freeway Performance Initiative, and critical safety

improvements. Specifically, in the area of safety, staff proposes to fund a first phase of the Vasco Road Safety project in Contra Costa County as well as several North Bay safety projects using federal STP sub-allocated funds.

4. **Ensure Regional Success in Project Delivery:** Rehabilitation and maintenance projects will be over-programmed to ensure that there are shelf-ready projects should there be obstacles in delivering the larger projects and/or the system reinvestment projects. The region will establish deadlines in advance of the federal deadlines – one set for the quick-hitters and a secondary milestone for the larger more complex projects that are expected to take longer for delivery.

PROGRAMMING CATEGORIES

In summary, the breakdown of the funding proposal is summarized below for expected regional Surface Transportation Program and Federal Transit Administration funds:

All Dollars in Millions

Program	Funding Available	Focus Area	Project Name	Proposed Regional Investment
Transit FTA 5307/ 5309	\$340	System Preservation	Transit Rehabilitation	\$270
		Train to Plane	Oakland Airport Connector	\$70
				Subtotal: \$340
Surface Transp. Program	\$154	System Preservation	Local Road Rehabilitation	\$122
		Safety	Vasco Road Safety Imps - CC County	\$10
		Safety	North Bay Safety Improvements	\$3
		Smart Highways	Freeway Performance Initiative – Ramp Meters	\$19
				Subtotal: \$154
				Total: \$494

GENERAL PROGRAMMING POLICIES

1. **Public Involvement.** MTC is committed to a public involvement process that is proactive and provides comprehensive information, timely public notice, full public access to key decisions, and opportunities for continuing involvement. MTC provides many methods to fulfill this commitment, as outlined in MTC’s Public Participation Plan, Resolution No. 3821. The Commission’s adoption of the ARRA program, including policy and procedures, are similarly subject to the MTC Public Participation Plan. MTC’s advisory committees and

the Bay Area Partnership were consulted in the development of the region's ARRA funding program.

2. **2009 Transportation Improvement Program (TIP).** Projects approved as part of the ARRA Program must be amended into the 2009 TIP. The federally required TIP is a comprehensive listing of all San Francisco Bay Area transportation projects that receive federal funds, and/or subject to a federally required action, such as federal environmental clearance, and/or are regionally significant for air quality conformity or modeling purposes. It is expected that funding for the System Preservation projects will be programmed in the TIP, to the fullest extent possible, as Grouped Project Listings.
3. **Air Quality Conformity.** In the Bay Area, it is the responsibility of MTC to make an air quality conformity determination for the TIP in accordance with federal Clean Air Act requirements and Environmental Protection Agency (EPA) conformity regulations. MTC evaluates the impact of the TIP on regional air quality during the biennial update of the TIP. Since the 2009 air quality conformity finding has been completed for the 2009 TIP, no non-exempt projects that were not incorporated in the finding will be considered for funding in the American Recovery and Reinvestment Act Program.
4. **Environmental Clearance.** Project sponsors are responsible for compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.), and the National Environmental Protection Act (42 USC Section 4-1 et seq.) standards and procedures.
5. **Application, Resolution of Local Support, and Opinion of Legal Counsel.** Project sponsors/ Implementing Agencies must submit a completed project application for each project proposed for funding. The project application consists of two parts: 1) an application submittal and/or TIP amendment request form to MTC staff, and 2) Resolution of Local Support approved by the project sponsor/ Implementing Agency's Board.
6. **Project Screening and Compliance with Regional and Federal Requirements:** MTC staff has performed a preliminary review of projects proposed for American Recovery and Reinvestment Act Program to ensure 1) eligibility; 2) RTP consistency; 3) project readiness and 4) other requirements of the ARRA legislation. The projects are also subject to compliance with the following:
 - Federal Project Eligibility;
 - RTP Consistency;
 - Title VI Compliance;
 - Accommodations for Bicyclists, Pedestrians and Persons with Disabilities (FHWA funds only);
 - Local Resolution of Support; and
 - Fully Funded Projects.

In addition to the above, the following requirements would apply to FTA funded projects per MTC Resolution 3841:

- Eligibility for funding under the FTA Urbanized Area Formula, Fixed Guideway Modernization and/or Rural and Small Urban Areas programs.
- Capital project under FTA definition of capital; operating assistance is not eligible.
- Asset useful life requirements
- All other applicable federal requirements

Finally, the following factors were considered in the project selection process as required by the ARRA:

- Funds can be obligated and contracts can be awarded within the deadlines of this Act.
- Inclusion status in an approved Statewide Transportation Improvement Program (STIP) and/or Metropolitan Transportation Improvement Program (TIP)
- Projection of project completion within a three-year time frame
- Location in economically distressed areas as defined by section 301 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3161) for FHWA funding only.

- 7. MTC Routine Accommodations of Pedestrians and Bicyclists Policy:** Applicable project sponsors need to complete the Routine Accommodations of Pedestrians and Bicyclists Accommodations checklist and make this information available to local bicycle advisory committees prior to project programming in the TIP as set forth by MTC Resolution 3765.
- 8. System Preservation Distribution:** The System Preservation funding will be distributed to the county CMAAs and transit operators using established formulas developed by MTC and the Bay Area Partnership for the distribution of federal funding for purposes of transit and local streets and roads rehabilitation, as described below.

System Preservation Distribution - Local Streets and Roads Rehabilitation

The county-wide shares are calculated using an allocation formula developed and approved by the Local Streets and Roads Working Group (a group comprised of local agency public works staff that reports to the Partnership Board), in collaboration with MTC staff. The allocation formula contains four factors, weighted 25% each, including population, lane mileage, arterial and collector shortfall, and preventive maintenance performance. The performance share of the formula is weighted by the total share derived from the other three factors. This weighting is performed to take into account the relative size and need of the local agencies when distributing the 25 percent of available funding that is conditioned on performance. Each jurisdiction's share of the available funding is calculated individually and then the shares are summed at the county level.

System Preservation Distribution – Transit Rehabilitation

The transit formula used is essentially that established during the last recessionary period among all the transit operators and incorporated into a 10% flexible set-aside for operators in the annual FTA formula funds. The numbers are 50% based on ridership and 50% based on FTA revenue factors. FTA revenue factors provide the basis for apportioning the funds nationally by urbanized area and include revenue vehicle miles, passenger miles,

and operating cost. Because FTA money comes into the region in 12 distinct urbanized areas, the regional Transit Capital Priorities Process and Criteria establishes a percentage of the set-aside in each urbanized area for each eligible operator. For the ARRA funding, staff has aggregated the percentages regionally by weighting the amount of funds by urbanized area.

- 9. Project Delivery and Award Deadline Conditions:** A primary objective of the ARRA program is economic recovery and as a result, projects receiving grants are required to meet stringent project delivery deadlines set forth by the legislation and by MTC. These deadlines ensure that ARRA funds will not be lost to the region.

Funding for System Preservation projects that do not meet the deadline will be redirected to another eligible project within the county (FHWA) or urbanized area (FTA), at the discretion of the County Congestion Management Agency, or redirected at the discretion of the transit operator, as applicable.

Funding for Non-System Preservation projects that do not meet the prescribed deadlines will be redistributed to the system preservation projects within the applicable categories.

System Preservation Projects-- Local Streets and Roads

a) Although the ARRA does not provide early delivery deadlines for the regional sub-allocated STP funding, by establishing delivery deadlines for the entire system preservation funding, job creation and preservation is expedited. Therefore, all Local Streets and Roads System Preservation funds have a regional obligation (E-76 / federal authorization to proceed) deadline of May 31, 2009 (approximately 90 days after Commission approval). Funds not obligated by May 31, 2009 are subject to reevaluation by MTC, Caltrans Local Assistance and CMA staff, for redirection to other projects that can be delivered no later than July 31, 2009. To meet the May 31, 2009 obligation deadline, project sponsors must submit their Preliminary Environmental Studies (PES), field review forms and related documentation to Caltrans by March 5 (approximately one week after Commission approval), and must receive NEPA clearance and submit all remaining federal-aid required documentation, including the final PS&E package to Caltrans by April 30, 2009 (approximately 60 days). Funds that miss the April 30th NEPA Clearance / final PS&E submittal deadline are subject to reevaluation by MTC, Caltrans Local Assistance and CMA staff for redirection to other projects that can meet the obligation deadline.

b) All funds must be in an awarded contract by September 30, 2009 (approximately 210 days). This is consistent with the intent of the ARRA to create and preserve jobs as soon as possible. Furthermore, project sponsors are required to submit their required Award notification to Caltrans (with a copy to the CMAs) within 30 days of award, and no later than October 31, 2009.

c) Additional timely use of funds as outlined in the regional project delivery policy (MTC Resolution 3606) must also be met. Especially the post-award deadlines. Project sponsors that do not meet the timely use of funds deadlines are subject to disqualification and/or limitation of regional discretionary funding during the next federal authorization Act.

System Preservation Projects-- Transit

- a) All funds have a regional obligation (approved FTA grant) deadline of May 31, 2009 (approximately 90 days following Commission approval). Funds not obligated by May 31 are subject to redirection to other projects that can meet the Act's expedited timely use of funds provisions. Although the ARRA only requires that 50 percent of the funds must meet the earlier deadline, by establishing a delivery deadline for all of the system preservation projects, funding can be redirected within the region should some projects fail to deliver by the federal deadline.
- b) All funds must be expended or in an awarded contract by November 30, 2009, (approximately 270 days following Commission action). This is consistent with the intent of the ARRA to create and/or preserve jobs as soon as possible.
- c) Project sponsors must adopt the Local Resolution of Support by March 31st.

Non-System Preservation Projects

- a) All non-system preservation funds have a regional obligation (E-76 / federal authorization to proceed / approved FTA grant) deadline of November 30, 2009 (approximately 270 days following enactment). Funds not obligated or in an approved FTA grant by November 30 are subject to redirection to other projects that can meet the Act's expedited timely use of funds provisions.
- b) For all non-system preservation projects, all funds must be in an awarded contract by December 31, 2009 (approximately 300 day from enactment). This is consistent with the intent of the ARRA to create and/or preserve jobs as soon as possible.

10. Project Policy and Funding Commitment Conditions

The deadline for meeting the policy and funding commitments necessary for amendment into the TIP is June 2009.

- a) Oakland Airport Connector Project:
 - Funding will be amended into the TIP after release of bid documents for the project including a BART funding plan that identifies commitments of the following for a total of \$151 million, depending on whether a public financing or public-private partnership is pursued:
 - \$30 million in Doolittle savings;
 - \$50 million in Transbay Tube seismic savings;
 - \$71 million in BART contribution (High Speed Rail Connectivity/TIFIA/Private Financing)
 - MTC execution of the grant will follow confirmation of successful bid process and ability to move to contract award.

c) Safety Projects

- Vasco Road: Funding will be amended into the TIP after determination and secured commitments for the following: \$8 million in local funds to match the regional commitment.

d) Freeway Performance Initiative

- Funding will be amended into the TIP after determination and secured commitments for the following:
 - All projects must be included in Freeway Performance Initiative (FPI) as described in the Transportation 2035 Plan.
 - FPI projects which include ramp metering elements must have a local resolution of support to activate the metering.

11. Fixed Program and Specific Project Selection. The regional ARRA program is project specific and the ARRA funds programmed to projects are for those projects alone. Any changes must be accompanied by an amendment to the Transportation Improvement Program. The ARRA Program funding is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded with ARRA funds. Project sponsors are responsible for securing the necessary funds, in the case of cost increases or additional funding needed to complete the project including contingencies.

12. Local Match. Projects may be funded with ARRA Program funding up to 100% of the total project cost, unless otherwise noted.

13. Priority Development Areas. In Transportation 2035, the Commission's transportation/land use and climate change policies seek to align "focused growth" land use principles and actual transportation investments. Specifically, new funding, such as the ARRA, provides the most viable opportunity to make this connection. However, the rapid turn-around to adopt the program, coupled with the timely use of funds deadlines, hinder its direct linkage to such incentives. Therefore, staff is directed to begin developing a priority development area (PDA) priority investment strategy in advance of a completed Authorization, in order to guide the federal programming under the new federal law, as a proxy and complement to the funding opportunities presented by the ARRA.

SCHEDULE

As noted previously, this supplementary funding is subject to very short project delivery deadlines. In order to ensure that the funds are not lost due to not meeting the obligation deadlines, the policy development and programming will be on an expedited timeline as outlined below.

American Recovery and Reinvestment Act (ARRA) Program Programming Schedule	
February 6, 2009	Partnership Board meeting
February 10, 2009	MTC Joint Advisors meeting
February 11, 2009	Programming and Allocations Committee review of regional programming proposal
February 17, 2009	Enactment of the ARRA
February 25, 2009	Commission approval of ARRA program and accompanying TIP amendment
March 5, 2009	PES/Field Review Documents Submittal Deadline – LS&R System Preservation Projects
April 30, 2009	60-day NEPA clearance and Final PS&E Package Deadline – LS&R System Preservation
May 31, 2009	90-day Obligation (E-76) Deadline – LS&R System Preservation Projects 90-day Grant Award Deadline – Transit System Preservation Projects
June 30, 2009	Conditions met – Non-System Preservation Projects
September 30, 2009	210-day Contract Award Deadline – LS&R System Preservation Projects
November 30, 2009	270-day Obligation/Grant Award Deadline – All Non-System Preservation Projects 270-day Contract Award Deadline – Transit System Preservation Projects
December 31, 2009	300-day Contract Award Deadline – All Non-System Preservation Projects