

Memorandum

Tab 25

To: CHAIR AND COMMISSIONERS

CTC Meeting: May 18, 2016

Reference No.: 4.8
Action
REPLACEMENT

From: SUSAN BRANSEN
Executive Director

Subject: **TOLL FACILITY APPROVAL REQUEST – INTERSTATE 405 IMPROVEMENT PROJECT
IN ORANGE COUNTY**

ISSUE:

The Orange County Transportation Authority (OCTA) requested the Commission's approval to develop and operate a high-occupancy toll facility on Interstate (I) 405 between State Route (SR) 73 and I-605 in Orange County. Should the Commission, pursuant to Assembly Bill 194 (Frazier, 2015), approve OCTA's request?

RECOMMENDATION:

Staff recommends that the Commission approve OCTA's request to develop and operate a high occupancy toll facility on I-405 between SR 73 and I-605 in conjunction with its proposed I-405 Improvement Project as specified in the application received on April 1, 2016. This recommendation is based on information provided by OCTA and, after considering testimony provided at the public hearing held on April 28, 2016, staff finds that the application meets the eligibility criteria required by AB 194.

The proposed project will improve the corridor's performance by increasing passenger throughput and reducing delays. In addition, the proposed project capital cost expense estimate is \$1.9 billion, and will be funded with local sales tax M2 funding, state and federal funding, and the proceeds of non-recourse toll revenue-backed obligations using a direct TIFIA loan and/or toll revenue bonds. Should the project suffer financial setbacks, the application states that OCTA will use additional toll revenue bonds or local sales tax funding.

BACKGROUND:

On October 9, 2015, Governor Brown signed into law Chapter 687, statutes of 2015 (AB 194), delegating to the Commission the legislative responsibility to approve the tolling of transportation facilities in California. Section 149.7 of the California Streets and Highways Code, as amended by AB 194, authorizes regional transportation agencies or the California Department of Transportation (Caltrans) to apply to the Commission to develop and operate high-occupancy toll lanes or other toll facilities, including the administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit or freight.

Applications for the development and operation of toll facilities are subject to review and approval by the Commission pursuant to criteria set forth in guidelines established by the Commission. At its March 2016 meeting, the Commission adopted Toll Facility Guidelines (guidelines) giving direction to applicants for the development and operation of toll facilities.

The Commission's adopted guidelines state that, after the Commission has approved a project, it will have no further role in reviewing or approving changes to the project except at the request of the sponsor agency. If OCTA finds it necessary or appropriate to make changes to the toll facility project after approval, the Commission expects that the agency will request approval of the change by submitting a supplement to the project application setting forth a description of the change and the reasons for it.

OCTA Toll Facility Application – I-405 Improvement Project

On April 1, 2016, OCTA submitted an application pursuant to AB 194 to develop and operate a high-occupancy toll facility between SR 73 and I-605 in conjunction with its proposed I-405 Improvement Project (project). The \$1.9 billion¹ project will add one general purpose lane in each direction on the I-405 from Euclid Street to the I-605 interchange. The proposed project will also add a lane in each direction of I-405 from SR-73 to SR-22 to be managed jointly with the existing high occupancy vehicle (HOV) lanes as the 405 Express Lanes with two lanes in each direction between SR-73 and I-605. The project also includes replacement of 18 bridges over the freeway, as well as interchange and arterial improvements in the vicinity of the freeway.

According to OCTA, a design-build procurement approach will be utilized to deliver the proposed project. Procurement of a design-build contractor is currently underway with contract award anticipated in November 2016 and construction completion in 2022. The \$1.9 billion project is planned to be funded as follows:

Source	Funding Amount (In Thousands)
Orange County M2 Sales Tax	\$1,011,352
Various Federal Funds	\$45,648
TIFIA Loan/Toll Revenue Bonds	\$561,000
SHOPP*	\$82,000
M2 Sales Tax/TIFIA funding (<i>see footnote</i>)	\$200,000
Total	\$1,900,000

* Caltrans has committed \$82 million from the State Highway Operation and Protection Program (SHOPP).

OCTA states that it anticipates receiving up to \$561 million from a federal Transportation Infrastructure Finance and Innovation Act (TIFIA) loan, to be repaid with toll revenues. For any

¹ At the time OCTA submitted its application, the project cost estimate was \$1.7 billion. On May 12th, 2016, OCTA sent a letter to the Commission indicating that, after a federally-required second cost estimate review for the project, the final cost estimate for the project is \$1.9 billion. OCTA plans to fully cover the updated cost estimate through a combination of Measure M2 local sales tax funds and federal TIFIA financing authority. This staff report is updated to reflect the new information provided by OCTA.

amount less than \$561 million the project receives from the TIFIA loan, OCTA will seek toll revenue bonds secured by the net revenues from the Express Lanes.

COMMISSION APPROVAL CONSIDERATIONS

Minimum Criteria

For the Commission to approve a proposed toll facility, AB 194 requires the Commission to find, at a minimum, that the application meets the following criteria:

(1) A demonstration that the proposed toll facility will improve the corridor's performance by, for example, increasing passenger throughput or reducing delays for freight shipments and travelers, especially those traveling by carpool, vanpool, and transit.

The application includes a copy of the project's Final Environmental Impact Report/Environmental Impact Statement (Final EIR/EIS) which provides substantial information regarding increases in throughput and reduction in delay for freight, travelers, and those ride sharing. The application summarizes many of the benefits included in the Final EIR/EIS that demonstrate the proposed project will improve the corridor's performance, including:

- Reducing general purpose lane travel times from 133 minutes to 29 minutes (2040 No-Build vs Project scenario);
- Reducing Express Lane travel time from 121 minutes to 13 minutes (2040 No-Build vs Project scenario);
- Increasing throughput in the corridor by 23 to 50 percent;
- Reducing annual vehicle hours of delay in the corridor by 2 million hours in the opening year and 78 million hours in 2040;
- Improving safety by addressing operational and geometric deficiencies, reducing congestion and reducing emergency vehicle access time to freeway incidents;
- Generating excess toll revenues that will be reinvested in the corridor.

(2) A requirement that the proposed toll facility is contained in the constrained portion of a conforming regional transportation plan prepared pursuant to Section 65080 of the Government Code.

The application states that the I-405 Improvement Project is included in the 2012 Regional Transportation Plan adopted by the Southern California Association of Governments.

(3) For projects involving the state highway system, evidence of cooperation between the applicable regional transportation agency and Caltrans.

The application states that OCTA and Caltrans are developing and implementing in partnership the I-405 Improvement Project. The Caltrans District 12 Director approved the Final EIR/EIS (dated March 26, 2015) and the Final Project Report (dated June 15, 2015). Further, Caltrans has approved, signed, and published the Record of Decision (signed May 15, 2015) and signed the Notice of Determination (June 17, 2015). OCTA and Caltrans jointly developed and agreed to the

“I-405 Project Implementation Preliminary Agreement in Terms and Conditions as of April 16, 2015.” This agreement specifies roles in project delivery, identifies project funding and financing, provides conditions for Express Lane operations, and presents a framework for use of net excess revenues. Finally, OCTA and Caltrans executed a Cooperative Agreement establishing roles and responsibilities for implementation of the project.

(4) A discussion of how the proposed toll facility meets the requirements of Streets and Highways Code Section 149.7.

According to OCTA, the I-405 Improvement Project meets the minimum and additional requirements of Section 149.7 of the Streets and Highways Code. For example, the application describes the following actions to ensure compliance:

- OCTA and the California Highway Patrol (CHP) have met on several occasions to discuss an agreement for enforcement services related to the toll facility and reimbursement to CHP for its costs. The application states that an agreement will be reached before the proposed Express Lanes are open to traffic;
- OCTA and Caltrans have an initial agreement addressing “all matters related to design, construction, maintenance, and operation of the toll facility, including, but not limited to, liability, financing, repair, rehabilitation, and reconstruction” and reimbursement of Caltrans expenses;
- OCTA is committed to managing the revenue generated by the tolls to cover debt obligations of the toll facility and “development, maintenance, repair, rehabilitation, improvement, reconstruction, administration, and operation of the toll facility” with all remaining funds used in the corridor pursuant to an expenditure plan for net excess revenues;
- OCTA will include required language in the necessary documents when it issues bonds to finance construction and construction-related expenditures that the bond must not pledge the full faith and credit of the State of California;
- OCTA has met and coordinated on numerous occasions with all jurisdictions through which the proposed Express Lanes will pass and will continue to do so, as needed, for the life of the Project.

(5) A complete project initiation document for the proposed toll facility.

The application includes a copy of the complete project initiation document.

(6) A complete funding plan for development and operation of the toll facility.

The Commission interprets this minimum criterion to mean that all funding sources are identified and the applicant has a plan for securing these funds. A complete funding plan does not mean that all financing has been secured, as it is possible some financing sources may not be available until the project sponsor has authority to develop and operate the toll facility, which is granted only

upon approval by the Commission. The application contains a significant discussion of the funding plan for the project, including cost estimates, identified funding sources, and alternative options if either the costs increase or the funding sources are less than anticipated.

Additional Considerations

The Commission's guidelines specify that the Commission will consider all provided information to determine whether to approve the proposed toll facility. Accordingly, in conjunction with responding to the statutorily-defined minimum criteria, the guidelines encourage applicants to provide more information than that necessary to meet the minimum criteria. The guidelines request that, whenever applicable and possible, applicants provide supplemental information for the Commission to consider. The OCTA Toll Facility Application includes a significant amount of supplemental information in support of the I-405 Express Lanes.

Compliance with State Law: The application states that the proposed project is consistent with established standards, requirements, and limitations that apply to toll facilities in state law, such as eminent domain law, state highway design standards, and statutory design-build procurement requirements.

System Compatibility: The application states that the proposed project is consistent and compatible with the present and planned transportation system and specifies the regional planning documents within which the project is included.

Corridor Improvement: AB 194 specified the Legislature's intent that highway tolling should be employed for the purpose of optimizing the performance of the transportation system on a transportation corridor and should not be employed strictly as a revenue generating facility. With that in mind, the application includes a discussion that demonstrates that the proposed toll facility will significantly improve the corridor's performance.

OCTA cites a 2013 report prepared by FHWA which notes that the I-405 had the highest average annual daily traffic of any freeway in the nation. The purpose of the proposed project is to address the current deficiencies on the I-405 corridor, such as:

- The general purpose and HOV lanes peak-period traffic demand exceeds available capacity;
- The general purpose traffic lanes and interchanges have geometric, storage, and operational capacity deficiencies;
- The freeway has limitations in detecting traffic incidents and providing rapid response and clearance due to lack of capacity and technological infrastructure.

The application states that, once complete, the proposed project will reduce commute time, encourage shared rides and public transit, increase safety and economic productivity, and enhance the quality of life for Southern California residents and visitors.

Technical Feasibility: The application describes the type, size, and location of the proposed project, all proposed interconnections with other transportation facilities, and the communities that may be affected. In addition, as noted above, the application outlines the time frame for

project completion and presents a reasonable discussion on operation plans for the proposed facility, given the point at which the project is in its development. Finally, the application states that there is a process in place to develop a maintenance plan with Caltrans and define assumptions and responsibilities during the operation of the project.

Financial Feasibility: As noted above, the application describes the funding sources OCTA expects to use for the proposed project. According to OCTA, they will control cost increases through utilization of design-build procurement. Against the event of cost increases during construction, higher than anticipated interest rates, or lower proceeds from the TIFIA loan/toll revenue bonds, OCTA states that an additional \$243 million in M2 county sales tax funding is available. Should there be a revenue shortfall during operations of the Express Lanes, OCTA intends to fund a debt service reserve fund, operations and maintenance reserve fund, and major maintenance reserve fund. These reserve funds will also enhance the credit for the toll revenue obligations.

Community Support: The application states that there is widespread support for the proposed project as evidenced by the OCTA board approval of the project. There is some opposition to tolling and increasing the HOV occupancy requirement for free use of the Express Lanes, as well as some localized opposition to specific aspects of the project. The Cities of Long Beach and Seal Beach have filed suit against Caltrans over the adequacy of the Final EIR. The application states that OCTA and Caltrans are working to resolve this litigation. According to OCTA, a stay or injunction prohibiting the project from moving forward has not been issued.

PUBLIC HEARING

AB 194 requires that, prior to approving an application, the Commission conduct at least one public hearing at or near the proposed toll facility for the purpose of receiving public comment. The Commission held a public hearing to receive public comment on the proposed Express Lanes related to this application on April 28, 2016. The hearing was held in the Neighborhood Community Center located at 1845 Park Avenue, Costa Mesa, California. Commissioners Dunn and Inman were present for the hearing.

Following a presentation by Caltrans and OCTA on the project, the Commission received public comment from three individuals. One presenter spoke in support of the project. One presenter raised concerns that the preliminary traffic and revenue study did not include an analysis of diverted trips and impacts to local streets adjacent to the proposed project. The final presenter described the risk of moving forward with a project that is still involved in CEQA litigation, suggesting that OCTA and Caltrans are headed down an expensive and risky path because they may have to perform additional work, delaying the start of the project and increasing costs should the City of Long Beach prevail.

OCTA's Toll Facility Application can be found at:

http://www.catc.ca.gov/Hearings/AB_194_Hot_Lanes/OCTA_Toll_Facility_Application.pdf

Attachment A – CTC Resolution G-16-16

Attachment B – Comments from April 28, 2016 Public Hearing

Attachment C – Assembly Bill 194 (Frazier, 2015)



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May 12, 2016

Mr. Bob Alvarado
Chairman
California Transportation Commission
1120 N Street, MS-52
Sacramento, California 95814

Subject: Interstate 405 Improvement Project in Orange County Toll Facility
Project Request – Cost Estimate Information

Dear Chair Alvarado,

The Orange County Transportation Authority (OCTA) Board of Directors appreciates the California Transportation Commission's (CTC) consideration of the toll facility project request for the Interstate 405 Improvement Project in Orange County, which was developed consistent with AB 194 (Chapter 687, Statutes of 2016) and the toll facility guidelines adopted by the CTC on March 16, 2016. As one of the largest, most complex transportation projects in the state, OCTA is working closely with the Federal Highway Administration (FHWA) and the California Department of Transportation (Caltrans) to proceed with project implementation later in 2016, with completion scheduled in 2022. CTC approval of the toll facility is critical to this project delivery timeline.

The Interstate 405 Improvement Project will add one general purpose (GP) lane in each direction, and one express lane in each direction which will be combined with the existing high-occupancy vehicle (HOV) lane to form a dual express lanes facility. This project also allows for numerous bridge and arterial improvements. When finished, the project will provide multiple corridor improvements and facilitate improved travel times and increased mobility options. The GP lanes are primarily funded by Orange County's local sales tax measure, Measure M2, and the express lanes with toll revenue.

Since OCTA's submittal of the Interstate 405 Improvement Project toll facility project request application, OCTA worked with Caltrans and FHWA on a second cost estimate review (CER) for the project, as FHWA requires on all major projects with an estimated total program cost greater than \$500 million. This construction-level CER is to occur as close as possible to the start of construction. In completing the CER, OCTA, FHWA and Caltrans sought to produce the most up-to-date realistic estimated costs of the project, providing a more stable cost estimate through its construction. Through this process, OCTA included the most updated project information, local and regional construction market experience, and consideration of federal requirements. The project team, which consisted of

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OCTA, FHWA and Caltrans, also engaged OCTA's program management consultant in this process. The CER team reviewed all aspects of scope related to structures, roadway elements, right-of-way, utilities, mitigations, engineering, construction engineering, contract administration, contingencies, and inflation rates.

On May 11, 2016, the findings from the CER were presented and approved by the OCTA Finance and Administrative Committee. Within the CER, project costs for the design-build contract were escalated to the mid-point of the construction period. In addition, a quantitative analysis of the identified risks and the probabilities of these risks occurring were modeled. Through the CER analysis, the 90 percent probability cost estimate was determined to be \$1.82 billion. OCTA also is including an additional \$80 million for right-of-way and utility cost contingency. This addition is based on more recent right-of-way settlements and utility costs performed on other major projects OCTA is delivering. Therefore, the final cost estimate for the Interstate 405 Improvement project is now estimated at \$1.9 billion.

OCTA plans to fully cover the updated cost estimate through a combination of Measure M2 and federal financing authority through the Transportation Infrastructure Finance and Innovation Act. If you need any additional information or have any questions about the updated CER, please feel free to contact Jeff Mills, Program Manager, Highway Programs, at (714) 560-5925.

Sincerely,



Darrell Johnson
Chief Executive Officer

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c: Members, California Transportation Commission
Vincent Mammano, Federal Highway Administration – California Division
Ryan Chamberlain, Director, Caltrans District 12
Susan Bransen, Executive Director, California Transportation Commission