

BAIFA Staff Responses to Questions Submitted on January 17, 2019 by C/CAG and SMTA Staff

January 24, 2019

Questions on Option 2b: San Mateo Owns the Express Lanes and Contracts with BAIFA for Operations

1. Where in Streets & Highway Code (SHC) section 149.7 permit BAIFA to own and operate the US-101 Managed Lanes Project ("Project")?

SHC Section 149.7 allows CTC to grant such authority to BAIFA through an application process. BAIFA is an eligible applicant under Section 149.7(k) as a joint exercise of powers between MTC and the Bay Area Toll Authority (BATA).

The current BAIFA express lane network was authorized in October 2011 through a similar process provided by an earlier version of SHC Section 149.7. MTC was the applicant and, following CTC approval, MTC delegated ownership and operational responsibilities to BAIFA through an agreement between the two agencies. MTC, rather than BAIFA, was the applicant in 2011 for reasons of timing: (1) CTC's authority was to expire in December 2011. (It was renewed in 2016 through AB 194.) (2) At the time of the application MTC and BATA had not yet amended BAIFA, which was originally formed BAIFA to finance the Toll Bridge Seismic Program, to include express lanes.

2. Where in SHC Section 149.7 permit BAIFA to operate the Project and delegate ownership authority to San Mateo County (i.e., TA and C/CAG)?

Statute is silent on this. BAIFA would advise the CTC resolution approving BAIFA's application explicitly allow for delegation of ownership to San Mateo.

3. If the current statute does not allow the above, what would it take for BAIFA to change their enabling legislation to accommodate the offers their staff is currently making with regards to its operation of the 101 express lanes with ownership residing with San Mateo County?

The CTC approval process is adequate to establish Option 2b. If there were unanimous support, BAIFA could pursue legislation for Option 2b comparable to the existing legislation on which Option 2a (San Mateo owner contracts with VTA for operations) is based. For the best chance at success, we would have broad support among Bay Area counties. Under a typical process, legislation would be effective January 2020, which is too late; however, there may be avenues to expedite this to July 1, 2019.

4. Assuming the CTC will approve MTC/BAIFA to conduct and administer express lanes in San Mateo 101, will MTC/BAIFA transfer that authority to San Mateo County? If so, will that give San Mateo County the right to make toll policy decisions, as well as for San Mateo County to assume all liabilities of the San Mateo 101 express lanes?

If all parties decided to pursue Option 2b, BAIFA would transfer to San Mateo the authority granted to BAIFA by the CTC through the application process under SHC 149.7. Authority would

be transferred through an agreement that would give San Mateo responsibility for the express lanes, including the right to make toll policy decisions and assume all liabilities. BAIFA would seek assurances San Mateo will consult other Bay Area express lane owners in developing toll policy and strive for the kinds of consistency that the existing operators have agreed is important to ensure seamless travel for drivers.

5. Will San Mateo County's ownership rights in the San Mateo 101 express lanes be in perpetuity, even when contractual relationship between San Mateo and BAIFA to operate the express lanes is terminated?

Yes. BAIFA would transfer ownership responsibilities in perpetuity, with the option that the parties could agree at any time to terminate the agreement. The contract for operations would be a separate agreement with a limited term. The end of that term is probably a good time for both parties to evaluate whether San Mateo may wish to join BAIFA; however, BAIFA would not condition Option 2b on a commitment by San Mateo to join BAIFA at a future date.

6. Do we need BAIFA or MTC Board approval to allow San Mateo County to have ownership on San Mateo 101 express lanes? When could such approval be expected? And will the BAIFA board make it a condition for San Mateo County to join BAIFA in the future for BAIFA/MTC to approve this option?

Under the CTC approval process, BAIFA and San Mateo would need to agree on delegating ownership to San Mateo. Staff would recommend BAIFA approve the plan in concept, which could be done as soon as San Mateo makes a decision about its preferred option. The BAIFA-San Mateo agreement would be executed following CTC approval, in the spring or early summer. Joining BAIFA would not be a condition of the agreement; however, BAIFA would like to see a commitment by San Mateo to revisit the question of joining BAIFA at a later date. One suggestion was that the agreement establish a date at which San Mateo would re-look at joining BAIFA.

7. If BAIFA/MTC Board approves the transfer of authority to San Mateo County, will it be accomplished by a written agreement? Will MTC/BAIFA be willing to execute such written agreement with both TA and C/CAG being signatory parties? And can TA and C/CAG assign such authority in the future to a San Mateo County Joint Powers Agency?

Yes. BAIFA would prefer to execute the agreement with the owner; however, in the interest of time, BAIFA would be willing to execute an agreement with the TA and C/CAG and allow for assignment to a future San Mateo County JPA. San Mateo's counsel should opine on the question assignment from their perspective.

8. Please confirm that BAIFA will operate the San Mateo County Managed lanes under a contract, to be approved by C/CAG and the TA Boards, and that the contract will specify that C/CAG and the TA Board make final decisions on toll policies and adopt expenditure plans.

The BAIFA board is supportive of this Option 2b approach, which they discussed under an information item on January 23. The BAIFA board could take an action approving the approach

at their February 27 meeting. As noted in #4, BAIFA would seek assurances that San Mateo will consult other Bay Area owners in developing toll policy to ensure seamless travel for drivers.

9. What assurances do we have that BAIFA will not change the rules or details after an agreement is reached?

We are open to suggestions about how to reassure San Mateo. Staff would recommend BAIFA take an action approving the approach in February. We could also enter into a three-way MOU.

10. There is a provision in AB 194 which also permits a Joint Powers Authority to apply to the CTC for express lane authority. Would it be acceptable to MTC/BAIFA for a San Mateo County Joint Powers Authority to apply for CTC approval, and then contract with BAIFA to operate? This would be a more direct path for San Mateo County own and BAIFA operate.

This is an acceptable path. It is more direct initially but may not provide as clean a pathway for San Mateo to join BAIFA in the future, if it desires. For example, absent subsequent legislation, it may not allow BAIFA to bond finance as readily for the 101 corridor if San Mateo joined BAIFA at a later date because it likely wouldn't be considered part of the same enterprise as the other BAIFA corridors. To preserve this option for the future, at a minimum, BAIFA would recommend the CTC approval for San Mateo's application to allow for future assignment to BAIFA.

11. We understand BAIFA has existing contracts with CHP and Caltrans. And if we go with Option 2B, we presume BAIFA will need to amend such contracts to include San Mateo County. Please confirm. Also, as the owner of the Managed Lanes, will San Mateo need to have an independent contract with Caltrans and CHP, even though BAIFA will be amending its contract to include operations/maintenance and enforcement in San Mateo County?

Under Option 2b, BAIFA would provide enforcement for the San Mateo 101 lanes under contract with CHP. There would not be a need for San Mateo to contract with CHP.

The approach to Caltrans is less clear and will need to be discussed with Caltrans and San Mateo. Caltrans provides roadway maintenance on BAIFA's express lanes through an operations and maintenance agreement; that agreement also addresses BAIFA's financial responsibility for roadway rehabilitation and BAIFA's development of expenditure plans for both gross and net revenue. As owner, San Mateo would be responsible for use of gross and net revenue, and for funding roadway rehabilitation requirements. As such, it may be appropriate for San Mateo to have an agreement with Caltrans.

12. Which agency will ensure maintenance of state of good repairs for the equipment in San Mateo County?

The owner is responsible for ensuring a state of good repair and sets aside funding for replacement of the toll system and rehabilitation of the roadway. (See #11.) Under Option 2b, that would be San Mateo. As the contractor for the toll system, BAIFA would manage day to day O&M and would procure and manage toll system replacement projects within the funds provided for this purpose by San Mateo.

13. Would BAIFA be agreeable to a term of the agreement that will be for 6 years, extendable on mutual agreement? Please let us know if there are other factors that should be considered for determining the length of the agreement.

Yes. A 6 year term would allow for 3 years of implementation followed by 3 years of steady state operations. That is a good time to assess how the contract is working, including whether San Mateo may wish to join BAIFA. If everyone is satisfied, the agencies would likely agree to extend it to line up with the toll system replacement timeline, which would add 4 to 7 more years.

14. If this contract is implemented, does BAIFA agree to commence discussions for an extension of the term no later than 12 months before the term expires?

Yes.

15. If this contract is implemented, does BAIFA agree that within 5 years of the term of the contract, parties will review the next generation integration and technology opportunities, including the managed lanes ownership model?

Yes.

16. If this contract is implemented, does BAIFA agree that the existing BAIFA contracts with Caltrans and the CHP, and any other relevant parties, will be modified to include the San Mateo County Managed lanes, with an apportionment of costs for the San Mateo County facility? Please clarify how BAIFA will apportion the costs, such as by lane miles or other metrics.

Table 1, attached, lists the major contracts involved in operation of the lanes and our initial thinking about how costs would be attributed to San Mateo 101. We are willing to discuss these further. Most costs will be easily isolated to the corridor based on where work is performed.

BAIFA would require San Mateo pay BAIFA a deposit to cover initial O&M contract costs.

17. If this contract is implemented, does BAIFA agree that gross toll revenues will be distributed to San Mateo County, from which San Mateo County will pay expenses to BAIFA for operations.

Yes. See #16 regarding a deposit for O&M costs.

Other Responses

Subsequent to the January 17 email, San Mateo C/CAG and TA staff asked for written responses to the conditions attached to the C/CAG December Action and to a question raised in discussions among staff about what it would look like if C/CAG joined BAIFA initially and later wished to separate from BAIFA. These responses follow below.

Responses to Four Conditions from C/CAG December Action

1. **Funds to complete construction.** The project's current \$513 million funding plan assumes the use of \$53 million in future toll revenues.

Option 1. If San Mateo joins BAIFA and transfers ownership to BAIFA, BAIFA will take responsibility for securing an advance from BATA, bringing the total regional investment in construction to \$148 million. The funds will be repaid, at a nominal interest rate, from future San Mateo 101 gross toll revenue.

Option 2b. If San Mateo contracts with BAIFA instead of joining BAIFA, BAIFA will not take responsibility for securing an advance of these funds.

2. **Cost overruns.** The SCC application cover letter states cost overruns above the allocated amounts will be covered by SMCTA and C/CAG in partnership with MTC. MTC stands by this commitment under all the options (1, 2a and 2b).

Option 1. BAIFA will participate actively in risk management for the entire project and will assume full responsibility for any cost overruns for the toll system.

Option 2b. BAIFA staff will work with San Mateo staff to assess the causes of any toll system overruns and determine appropriate shares. For example, overruns due to features missing in the original estimate by San Mateo's consultants would likely be San Mateo's responsibility. Overruns due to management of field installation would be BAIFA's responsibility.

3. **Completing express lanes in the 101 corridor.** All parties desire to extend the express lanes north of I-380 into downtown San Francisco. The big questions will be about design and cost. Under all the options (1, 2a and 2b), this extension will require a combination of funding such as county sales taxes, SB1 competitive programs, Interregional Transportation Improvement Program and Regional Transportation Improvement Program. As such, MTC will work closely with partner counties to assess how projects both meet express lane network goals and are competitive regionally and statewide.

Option 1. As owner, BAIFA would have a direct interest in the extension and its cost and funding plan. While BAIFA cannot offer its own funds, which are fully committed to existing projects, BAIFA would participate in regional discussions from the perspective of the owner. This project would be in the next tier of projects (listed below with no implied priority) that close gaps in and extend BAIFA's network:

- US 101/I-280 from I-380 to downtown San Francisco (planning underway)

- I-680 Northbound from Walnut Creek to the Benicia Bridge (environmental underway)
- I-680 between SR-84 and I-580 (environmental underway)
- I-80 between Red Top Road and I-505 (design complete)
- I-80 between the Carquinez Bridge and the Bay Bridge (planning not yet begun)

Option 2b. The project would still be in running for regional and state funds. San Mateo agencies, rather than BAIFA, would be the advocates in those discussions.

4. **Net Revenue.** Statute defines net revenue and provides that net revenues must return to the corridor in which they were generated.

Option 1. BAIFA would allow the counties in the corridor to decide on how to spend net revenue. This is the approach discussed by MTC and its member counties from the time of the original CTC application. As contemplated in statute, BAIFA would ultimately adopt the expenditure plans approved by the counties, much like the CTC adopts the Regional Transportation Improvement Programs. BAIFA staff anticipate taking a Net Revenue Policy to the BAIFA board in March 2019.

Option 2b. Since BAIFA would be operating the lanes under contract, BAIFA would have no responsibilities associated with net revenue.

Response to Question about Separating from BAIFA

If San Mateo were to join BAIFA, would San Mateo have an option to separate from BAIFA later and assume ownership of the San Mateo 101 Express Lanes?

It would be relatively simple to separate from BAIFA, as long as BAIFA had not issued any debt for which US 101 corridor revenues were pledged. San Mateo would need to have authority for the express lanes. BAIFA and San Mateo would need to agree on financial terms, e.g., toll revenues/reserve funding owed to San Mateo and payments owed to BAIFA for any impacts to contracts.

It is not practical for San Mateo to leave BAIFA once BAIFA has issued debt if the SM revenues were contemplated in the assessment of financial responsibility or pledged to that debt.

Note, however, BAIFA could potentially allow counties/corridors to “opt out” of debt issuance. Those that opt out would not receive any proceeds for capital improvements, and their toll revenue would not be pledged for debt service. This would require additional review by financial advisors and consideration by the BAIFA board.

Table 1: Toll System O&M Contracts that would be held by BAIFA for San Mateo 101 under Option 2b (Preliminary)

Contract	Basis to San Mateo 101 Costs
1. CHP	Costs would be passed through based on officer time and CHP mileage driven to enforce the corridor.
2. Caltrans	Costs would be passed through based on work done by Caltrans on San Mateo 101 if BAIFA contracts with Caltrans for routine maintenance. See answer to #11.
3. Roadway maintenance contractor	Costs would be passed through based on work done on San Mateo 101 for this contract, which supplements Caltrans roadway maintenance.
4. Toll System Implementation and O&M	<p><u>Lane Side Implementation and O&M</u> Costs would be passed through based on the direct costs for San Mateo 101 from the change order adding this corridor to the existing Transcore contract.</p> <p><u>Host System O&M</u> Costs would be split among corridors based on lane miles, as trip building and license plan image review are cost major components.</p>
5. FasTrak® Services provided by BATA	<p><u>FasTrak® Account Management</u> (toll transactions and violation processing, credit card fees, DMV holds) Costs would be passed through based on the costs for transactions occurring on the San Mateo 101 corridor.</p> <p><u>BATA Financial Services</u> Costs would be passed through for services required to transfer gross revenue to San Mateo. ACTC and VTA pay BATA for these costs.</p>
6. Regional Operations Center (ROC)	Costs for staffing and operations of the ROC would be split among corridors based on lane miles as operator effort would be correlated with the number of signs, cameras and readers as well as the number of incidents.
7. Utilities	Costs would be passed through based on electric services and communications directly serving the San Mateo corridor. Any costs for centralized utilities (e.g., trunkline fiber connecting the corridor to the toll system host) would be split equally among all corridors.