

**Metropolitan Transportation Commission  
Operations Committee**

January 14, 2022

Agenda Item 5a

**Future Roles and Structure of the Bay Area Infrastructure Financing Authority (BAIFA)****Subject:**

Request for MTC to support in concept restructuring BAIFA, a joint powers authority composed of MTC and BATA, to: (1) allow BAIFA to serve as the tolling agency for State Route 37, subject to legislative authorization, and (2) provide enhanced regional transportation conduit financing.

**Background:**

BAIFA was established in 2006 as a joint powers authority (JPA) between BATA and MTC for financing the State contribution to the toll bridge seismic retrofit program and other potential transportation projects. BAIFA was intended to be the infrastructure financing arm of MTC, which cannot issue debt. Between 2011 and 2013, administration of Regional Express Lanes was added to BAIFA's authority so BAIFA could implement and operate MTC's 270-mile Regional Express Lane Network. At that time, BATA and MTC redefined BAIFA membership, previously a subset of Commission and Committee officers, to reflect the commissioners representing the counties in the MTC Express Lanes Network (Alameda, Contra Costa and Solano), the MTC Chair, BATA Oversight Committee Chair, and California State Transportation Agency (CalSTA) representative. (See Attachment for additional detail on BAIFA's history and current responsibilities.)

Presently, there is an opportunity for BAIFA to fill two important additional roles: (1) as the regional tolling authority for State Route 37 (SR 37), subject to legislation that Senator Bill Dodd is expected to introduce early next year; and (2) as a regional transportation infrastructure conduit financing entity to help deliver the ambitious transportation investment program in Plan Bay Area 2050, starting with long-planned conduit financing of the BART car replacement project backed by Federal Transit Administration formula funds. Staff initiated conversations about these roles and potential changes to BAIFA's structure in Spring 2020. (See Attachment B for a summary.) At the time, a suggestion was made to bring the issue to BAIFA for consideration and recommendation to MTC. Soon thereafter, the COVID-19 pandemic paused

the associated legislative and financing activities, and the Commission turned its attention to other matters including the Blue Ribbon Transit Recovery Task Force, the BATA Recovery Ad Hoc Committee, and completion of Plan Bay Area 2050.

The Commission's work over the past two years on these topics underscores calls to action and inform staff's recommended approach to enabling BAIFA to assume the two additional roles.

1. Plan Bay Area 2050 includes an ambitious transportation investment program that will require tools including regional conduit financing. This activity can best be undertaken by a regional body with representation from all Bay Area counties.
2. The importance of a seamless approach to regional tolling is more evident than ever. It is a key foundation for transit priority and network management, and critical to serving the toll paying public. At the same time, SR-37 would be entering an especially complex tolling landscape, with new features including All Electronic Tolling, FasTrak® Equity Action Plan, and a growing, more connected regional express lanes network. There is tremendous value in creating a forum that has a big picture of the tolling landscape.
3. The stresses and strains of the past year have underscored the cost of administrative complexity. By appropriately streamlining the Commission's boards and committees, we can direct funds, staff time and commissioner time to achieving outcomes instead of toward administration.

**Recommended Approach:**

In November 2021, staff presented an approach to restructuring BAIFA to serve as a regional conduit financing entity and the SR 37 tolling authority while executing its current express lanes responsibilities. BAIFA directed staff to move the staff recommendation forward to MTC

The Bay Area Infrastructure Financing Authority would be restructured to be coterminous with the MTC board and responsible for all conduit borrowing for transportation infrastructure.

The new BAIFA board would establish a Tolling Committee of the Authority made up of the existing BAIFA Board and the North Bay counties on the MTC Board. The Tolling Committee would function much like the BATA Oversight Committee, providing in-

depth review and recommendations to the Authority on all matters related to express lanes and SR 37 as well as contract approvals.

A chief advantage of this approach is its strong support of the seamless principle. The larger board combined with the Tolling Committee create a structure with the knowledge and skills both to understand the region's complex tolling landscape and deliver and operate BAIFA's express lanes and SR 37. In the future the board could amend the committee to address other tolling opportunities, such as all lane tolling included in Plan Bay Area 2050.

Importantly, the revenues associated with each program would be segregated and fully protected. For this reason, the debt issued for one program should not affect the credit rating for the other programs, nor can revenue from one program be used as a backstop for another. Per California Streets and Highways Section 149.7, express lane toll revenue may be used for debt obligations, operations and maintenance and capital improvements of the toll facility (BAIFA facility approved by the California Transportation Commission) and reserves. Any remaining (net) revenue shall be used in the corridor in which it was generated. The SR 37 tolling legislation is expected to similarly restrict revenue from SR 37 to corridor improvements for mobility, safety and resiliency, including the ultimate project. Likewise, assuming BAIFA issues bonds backed by Federal Transit Administration revenue or other transportation revenue streams, those revenues will be dedicated to repayment of those bonds and not available for use on express lanes or SR 37.

BATA and MTC can alter BAIFA's governing board structure by approving an amendment to the Joint Powers Agreement that created BAIFA. The BAIFA board could subsequently establish the Tolling Committee. However, BAIFA's role as the tolling authority for SR 37 is dependent on state legislation; if that legislation fails to pass, BAIFA might choose to focus the Tolling Committee on express lanes only.

BAIFA endorsed the approach described above in November 2021 as preferable to two alternatives. The alternatives have higher administrative impacts, and more importantly, neither promotes seamlessness as effectively as the staff recommendation.

- Alternative A: Bay Area Infrastructure Financing Authority would be coterminous with the MTC board and would handle all conduit borrowing. The Authority would have two separate committees instead of a single tolling committee. One committee would provide in-depth review and recommendations for express lanes and would be composed of the current BAIFA membership. The second committee would provide review and recommendations for SR 37 and would be composed of commissioners representing the North Bay counties plus the MTC Chair, BATA Oversight Chair and CalSTA representative.
- Alternative B: MTC and BATA would create two new JPAs for a total of three separate JPAs. The JPA responsible for express lanes would have the same responsibilities and membership as BAIFA does today. The JPA responsible for regional transportation financing would be coterminous with the MTC board. The JPA responsible for SR 37 tolling would be composed of commissioners representing the North Bay counties plus the MTC Chair, BATA Oversight Chair and CalSTA representative. Staff does not recommend this alternative, which does little to advance seamlessness and has significantly higher administrative cost.

**Next Steps:**

If the Commission approves the staff recommendation in concept, the Executive Director would write a letter to Senator Dodd indicating the Commission's support for identifying BAIFA as the tolling authority in the State Route 37 tolling legislation to be introduced in early 2022.

In addition, staff would return to both MTC and BATA potentially as soon as February or March for approval to amend the BAIFA Joint Powers Agreement to establish the new board structure and recognize State Route 37 tolling responsibilities, the latter contingent upon enactment of Senator Dodd's bill. (The Joint Powers Agreement already provides conduit financing authority and should not require major revisions for that role.) The exact schedule for revisions to the Joint Powers Agreement will depend on two other major actions staff anticipates bringing to BAIFA in the first half of 2022. The timing of these actions remains somewhat fluid.

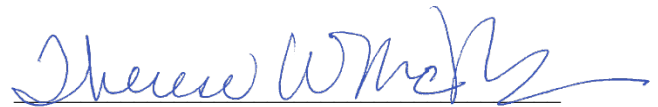
1. Staff will ask BAIFA to consider an amendment to BAIFA's Toll Facility Ordinance. Staff is currently reviewing the schedule for this amendment, originally planned to kick off in December 2021, to allow more time for Bay Area express lane operators to collectively discuss an approach to reduced penalties for express lane toll violations. Staff would like to avoid changing the board structure during four-month period from the start of the public comment on the proposed amendment to the date the amendment becomes effective.
2. Staff may ask BAIFA to authorize the previously approved BART car financing as early as Spring 2022 so that proceeds are available to BART in summer 2022 to accommodate to BART's current schedule for purchasing the replacement rail cars. It is advantageous for BAIFA's action on the financing to be taken by the restructured board.

**Requested Action:**

Staff requests this Committee refer this item to the Commission for support in concept the recommended approach to restructuring of BAIFA in order to: (1) allow BAIFA to serve as the tolling agency for State Route 37, subject to legislative authorization, and (2) provide enhanced regional transportation conduit financing.

**Attachments:**

- Attachment A: BAIFA History and Current Responsibilities
- Attachment B: Spring 2020 Discussion of Future BAIFA Roles
- Attachment C: Presentation



Therese W. McMillan

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**Attachment A**

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**BAIFA History and Current Responsibilities**

The Bay Area Infrastructure Financing Authority, or BAIFA, was established in September 2006 as a joint powers authority (JPA) between BATA and MTC for the financing of the State contribution to the toll bridge seismic retrofit program and other potential transportation improvement projects. BAIFA was intended to be the infrastructure financing arm of MTC, which cannot issue debt.

Between 2011 and April 2013, administration of the Regional Express Lanes was added to BAIFA's authority. At that time, BATA and MTC revised the JPA agreement to define membership as: the chair of the Commission, chair of BATA Oversight, the commissioners representing each of the three counties in the express lane network approved by the California Transportation Commission (Alameda, Contra Costa and Solano), and the CalSTA representative (non-voting). BAIFA agreed to enter into a cooperative agreement with MTC through which MTC delegates authority to BAIFA to develop and operate its 270-mile Regional Express Lane Network (Network). With the April 2013 action, BAIFA took on responsibility for a range of policy decisions including: project sequencing; toll rates and discounts; the proposed means-based toll pilot project; violation penalties; and actions necessary to finance the Network. BAIFA also provides operational services for other express lanes through agreements with the Alameda CTC and the San Mateo County Express Lanes Joint Powers Authority.

BAIFA still has the powers to plan and finance infrastructure and related transportation projects but is primarily focused on express lane implementation and operations. The six members currently include: the chair of the Commission representing Napa (Pedroza), Chair of BATA Oversight (Worth), Dutra-Vernaci (representative chosen by the Chair, as per the JPA agreement when the Chair is a county commissioner), Glover (Contra Costa), and Spering (Solano) and CalSTA (El-Tawansy, non-voting).

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**Attachment B**

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**Spring 2020 Discussion of Future BAIFA Roles**

**State Route 37 (March 2020 Legislation Committee)**

Staff proposed BAIFA could potentially serve as the tolling entity called for in SB 1408 (Dodd), which would have authorized tolling on State Route 37 (SR 37) to help fund interim congestion relief and longer-term resilience to flooding and sea-level rise. In 2016, the SR 37 Policy Committee started exploring tolling in the corridor to generate funds for the interim congestion relief and ultimate resilience project. The Resilient SR 37 Program MOU signed in February 2019 by BATA, Caltrans and the four North Bay County Transportation Agencies incorporated the idea of authorizing tolling on the facility by adding it as the 8th toll bridge in the BATA enterprise. However, staff no longer recommends that SR 37 tolling authority be vested in BATA for several reasons, including financial covenants BATA has with bondholders.

A key factor is that BATA bridges operate as a single system. Carving out special rules applicable to a new facility would violate this underlying principle and would contradict bond indentures of the existing BATA bonds. To comply with these bond indentures, if SR 37 were added as an 8<sup>th</sup> toll bridge, revenue from the first three dollars (Regional Measures 1-3) of tolls on SR 37 would be pledged to those programs and could not be reserved for SR 37.

By the same token, if SR 37 were added to the BATA enterprise, even if the legislation narrowly circumscribed BATA's responsibility for operation and maintenance and for completing the ultimate project, investors and bond rating agencies could consider flooding and the cost of the ultimate project as risks to the BATA enterprise as a whole, potentially causing a bond rating downgrade that would drive up borrowing costs and reduce the availability of toll revenue for transportation improvements.

**Regional Financing Considerations (April 2020 BAIFA)**

Staff summarized the need for financing against future federal formula funding to meet the cashflow needs of the Region's Transit Capital Priorities. The most immediate need is the BART car replacement project, but other regional transit operators are likely to face a similar timing mismatch between major capital priorities and the Federal Transit Authority (FTA) formula funding stream.

In October 2016, the Commission directed staff to pursue FTA Financing for the BART railcar project (replacing existing 669-car fleet and expanding to 775 through FY26 at an estimated cost of \$2.6 billion). FTA granted a Letter of No Prejudice for BART railcar project and financing of \$1.3 billion on February 13, 2019. The FTA approval letter includes, "MTC states that it will annually program FT A formula funds from the San Francisco-Oakland, Concord, and Antioch urbanized areas (UZAs) for repayment of scheduled debt service for years 2021-2034. The LONP set forth a structure that included BAIFA as the entity to issue debt; the LONP request and approval did not provide any detail on the governance structure of BAIFA. The current estimated amount of the proceeds needed are \$933 million over next 3-4 years (FY21-FY24).

The BART/FTA financing is an example of the potential benefit BAIFA could provide in financing important regional transportation projects that might be otherwise delayed. As BAIFA may act as a financing entity for a number of projects in the region, over time, it is advantageous for the BAIFA board to be coterminous with the MTC board, as is the case with BATA. To the extent there may be future financings using BAIFA as the issuer, that benefit other parts of the region, it may well be that Commissioners representing those parts of the region may insist on having a seat on the BAIFA board.





# FUTURE ROLES & STRUCTURE OF BAIFA

MTC OPERATIONS COMMITTEE

JANUARY 14, 2022

# LANDSCAPE

## CALLS TO ACTION

1. Ambitious 30-year transportation investment program will require innovative financing (Plan Bay Area 2050)
2. Regional tolling landscape is increasingly complex while seamlessness is more essential than ever (SR-37, BATA Equity Action Plan, Roadway Pricing Study, Blue Ribbon, Network Management)
3. Administrative simplicity enhances ability to achieve outcomes



## OPPORTUNITIES

1. Create a regional body for conduit transportation financing that protects each program
2. Identify a tolling agency for SR-37 legislation to be introduced in early 2022 and create a forum equipped to identify synergies and conflicts in toll policies
3. Manage the number of boards and committees to reduce administrative demands on board members and staff

# ORIGINAL BAIFA

- Created in 2006 to finance the State contribution to the toll bridge seismic program and other potential regional transportation projects – a financing arm for MTC

## Original BAIFA Membership

1. MTC Chair
2. MTC Vice Chair
3. BATA Oversight Chair
4. BATA Oversight Vice Chair
5. Programming and Allocations Chair
6. Programming and Allocations Vice Chair



# BAIFA TODAY

- Modified in 2013 to add responsibilities for delivery and operation of MTC express lanes
- Membership revised at that time to include one commissioner from each county in the MTC Network

## Current BAIFA Membership

1. MTC Chair
2. BATA Oversight Chair
3. MTC Commissioner from Alameda County\*
4. MTC Commissioner from Contra Costa County
5. MTC Commissioner from Solano County
6. Cal STA (non-voting)

\* In 2019 Chair Haggerty appointed Commissioner Dutra-Vernaci to this slot, consistent with the Joint Powers Agreement



# RECOMMENDATION: EXPAND BAIFA & CREATE TOLLING COMMITTEE

- BAIFA board coterminous with MTC to enable regional transportation financing
- Tolling Committee provides in-depth review/recommendations to the full board on all matters related to BAIFA express lanes and SR-37, similar to BATA Oversight Committee

	Full Board (21 members; 18 voting)	Tolling Committee (9 members; 8 voting)
Membership	Same as MTC	BATA Oversight Chair Operations Chair Express Lane County commissioners: ALA, CC, SOL* SR 37 County commissioners: MRN, SON, NAP Cal STA (non-voting)  * Represents SOL for both express lanes and SR-37
Authority	Issue transportation financing  Issue express lanes and SR-37 financing  Approve policy, technical and recommendations for express lanes and SR-37 (forwarded by committee)	Provide policy and technical recommendations on <ul style="list-style-type: none"> <li>- Toll policy (rates, equity, HOV requirements, discounts)</li> <li>- Toll ordinance (violations)</li> <li>- Operating, capital and rehab budgets</li> <li>- Net revenue policy and expenditures</li> <li>- Grants and financing</li> </ul> Approve contracts and agreements

# HOW OPPORTUNITIES ARE ADDRESSED

## OPPORTUNITIES

1. Create a regional body for conduit transportation financing that protects each program
2. Regional tolling landscape is increasingly complex while seamlessness is more essential than ever (SR-37, BATA Equity Action Plan, Roadway Pricing Study, Blue Ribbon, Network Management)
3. Manage the number of boards and committees to reduce administrative demands on board members and staff



## PROPOSAL

1. Facilitates financing for projects throughout the region (BAIFA's original intent) because the board is coterminous with MTC. Programs are protected by statute and bond covenants
2. Builds on BAIFA's tolling knowledge and track record. Committee and board have good understanding of BATA, express lanes and SR-37 tolling context and can facilitate seamlessness, including consideration of broader roadway pricing called for in Plan Bay Area 2050
3. With one new committee, the additional meeting demands on board and staff is contained



# SEAMLESS TOLLING

Requires a forum to understand synergies and conflicts in complex tolling policies

	<b>BATA</b>	<b>SR-37</b> (pending legislation / future board action)	<b>BAIFA Express Lanes</b>
<b>Violation Penalties</b>	Reduction approved	Align with BATA	Pending future approval
<b>Toll Rates</b>	Based on statute and number of axles. Must cover debt service, O&M and Rehab and Regional Measures	Based on statute and number of axles. Must cover debt service and O&M.	Based on congestion
<b>Discounts</b>	HOV: 50% Clean air vehicles: 50%	Align with BATA (required in draft bill)	HOV: free or 50% Clean air vehicles: 50%
<b>HOV Hours</b>	Peak periods (match express lanes in future?)	Align with BATA (match express lanes in future?)	5 AM to 8 PM (same as tolling)
<b>HOV Occupancy</b>	HOV 2+/HOV 3+ Consultation with Caltrans	TBD Consultation with Caltrans	HOV 2+/HOV 3+ Consultation with Caltrans
<b>Equity</b>	Under development	Required in draft bill; build on BATA and express lanes	Pilot underway

Aligns with BATA

Consistent with Regional Express Lanes

# PROGRAMS ARE PROTECTED

- Express lane statute restricts use of revenue to facility/corridor (SCH 149.7 excerpt attached)
- SR-37 legislation is expected to similarly restrict use of revenue
- FTA revenue used to back transit financing cannot be used for express lanes or SR-37
  
- Bottom Line: Revenue from one program cannot be used as a backstop for another program







# ALTERNATIVE A: EXPAND BAIFA AND CREATE TWO COMMITTEES (PRESENTED SPRING 2020)

- BAIFA board coterminous with MTC to enable regional transportation financing
- Separate committees for express lanes and SR-37; delegated authority may be limited

	Full Board (21 members; 18 voting)	Express Lanes Committee (6 members; 5 voting)	SR-37 Committee (7 members; 6 voting)
Membership	Same as MTC	MTC Chair <i>(or Ops Chair)</i> BATA O Chair County commissioners: ALA, CC, SOL Cal STA (non-voting)	MTC Chair <i>(or Ops Chair)</i> BATA O Chair County commissioners: SOL, NAP, SON, MRN Cal STA (non-voting)
Authority	Issue transportation financing  Issue express lanes & SR-37 financing  Adopt budgets  Adopt toll ordinances (violations)	Provide policy & technical recommendations on <u>all</u> express lane matters and budgets  <u><i>Potential delegated authority (subject to further review)</i></u> - Set toll policy (rates, equity, HOV requirements, discounts) - Approve net revenue policy and expenditures - Approve contracts and agreements	Provide policy & technical recommendations on <u>all</u> SR-37 matters and budgets  Authority for toll policy, net revenue and contracts would be equivalent to Express Lanes committee

# ALTERNATIVE B: CREATE NEW, INDEPENDENT JPAS

- Results in three separate JPAs
  - Financing JPA coterminous with MTC board
  - Two separate JPAs for express lanes and SR-37
- Additional risks:
  - Resource intensive, with no means to support
  - Need to determine whether BAIFA needs to be significantly restructured under this model

	Financing Authority (21 members; 18 voting)	Express Lanes Toll Authority (6 members; 5 voting)	SR-37 Toll Authority (7 members; 6 voting)
Membership	Same as MTC	MTC Chair BATA O Chair County commissioners: ALA, CC, SOL Cal STA (non-voting)	MTC Chair BATA O Chair County commissioners: SOL, NAP, SON, MRN Cal STA (non-voting)
Authority	Issue transportation financing (except MTC express lanes & SR-37 financing)	<ul style="list-style-type: none"> <li>- Issue express lanes financing</li> <li>- Set toll policy (rates, equity, HOV rqts, discounts)</li> <li>- Adopt toll ordinance (violations)</li> <li>- Adopt operating, capital and rehab budgets</li> <li>- Approve net revenue policy and expenditures</li> <li>- Secure grants</li> <li>- Approve contracts and agreements</li> </ul>	Same as express lanes  Plus, conservation and sea level rise / climate responsibilities in legislation

# COMPARISON

	PBA 2050 - Regional Entity for Financing	Tolling Expansion - SR 37 & Exp Lanes	Seamless Travel - Toll Synergies & Conflicts	Admin Simplicity - Manage Number of Boards
<b>RECOMMENDED</b> BAIFA coterminous with MTC One Tolling Committee, (similar to BATA Oversight)	<b>++</b> <b>(best)</b>	<b>++</b> <b>(best)</b>	<b>++</b> <b>(best)</b>	<b>++</b> <b>(best)</b>
Alternative A: BAIFA coterminous with MTC Two Committees (Spring 2020 approach)	<b>++</b> <b>(best)</b>	<b>++</b> <b>(best)</b>	<b>+</b> (fair)	<b>-</b> (poor)
Alternative B: Three Separate JPAs for Financing, SR 37 and Express Lanes	<b>++</b> <b>(best)</b>	<b>++</b> <b>(best)</b>	<b>--</b> (worst)	<b>--</b> (worst)

# SCHEDULE

Date	Action
<b>Early 2022</b>	<p>Contingent on MTC approval, Executive Director notifies Senator Dodd MTC supports listing BAIFA as SR-37 tolling agency in legislation</p> <p>Dodd introduces SR-37 legislation</p> <p>BATA and MTC amend the BAIFA Joint Powers Agreement; BAIFA establishes committee structure (SR-37 elements activated once bill is enacted)</p>
<b>Spring 2022</b>	<p>BAIFA amends toll ordinance for Means Based Pilot and reduced violation penalties (timing to be confirmed)</p> <p>BAIFA approves BART car financing (timing to be confirmed)</p>
<b>Summer 2022</b>	<p>BART needs financing proceeds</p>
<b>October 2022</b>	<p>Deadline for governor's signature on new legislation</p> <p>If SR-37 legislation enacted, activate BAIFA SR-37 responsibilities</p>