

# Bay Area Infrastructure Financing Authority (BAIFA)

July 28, 2021

Agenda Item 3a - 21-0959

## **BAIFA Resolution No. 23. Solano County I-80 Express Lanes Letter of No Prejudice and Agreement for the Repayment of Unrestricted Funds to MTC**

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**Subject:** A request for approval of BAIFA Resolution No. 23 requesting a Regional Measure 3 Letter of No Prejudice (LONP) from the Metropolitan Transportation Commission (MTC) for the Solano I-80 Express Lanes project; and a request for approval of a funding agreement for the repayment of unrestricted funds to MTC by STA (MTC Resolution No. 4479) and BAIFA.

**Background:** In Fall 2020, the California Transportation Commission (CTC) programmed over \$123 million in Senate Bill 1 (SB1) Trade Corridor Enhancement Program (TCEP) funds for the Solano I-80 Managed Lanes project. This project also has funding from Regional Measure 3 (RM3) which has been challenged and is currently under review in the California Supreme Court. In order to maintain the delivery commitment to CTC, and to avoid escalation costs for a project ready to proceed to construction but on hold due to lack of funding, MTC programmed federal discretionary funds as a backstop to RM3 funds in April 2021. At the same meeting, the Commission approved a LONP allowing the Solano Transportation Authority (STA) to proceed with the project using other funds and be eligible for reimbursement with RM3 funds when and if RM3 funds are made available.

### Need for Non-Federal Funds

STA and the Bay Area Infrastructure Finance Authority (BAIFA) have identified project components that cannot use federal funds due to contracting requirements. These project components include design services during construction and the toll system integrator, and total roughly \$40 million, of which BAIFA's share would be approximately \$31 million.

To keep the project on track, staff proposes exchanging bridge toll savings as part of the Core Capacity Challenge Grant Program (CCCGP) with federal discretionary funds earmarked for the I-80 project. To start, staff proposes exchanging funds on an annual basis based on cash flow, with STA and BAIFA needing \$4.7 million through the end of calendar year 2022. Staff has identified a bus purchase project sponsored by AC Transit as the source of the exchange; AC Transit will be made whole with federal discretionary funds which are eligible for bus purchases. Future exchanges will be subject to additional discussion with STA/BAIFA and MTC, and subject to future Commission approval.

The proposed exchange affects eight MTC resolutions taken to the July 2021 Programming and Allocations Committee, which can be categorized into three groups:

Group 1: Accurately Capture I-80 Project Programming and LONP in RM3 (currently, only STA is listed as project sponsor, but not BAIFA)

- Action 1.1: Separate BAIFA's toll system contract from the overall RM3 I-80 managed lanes project (MTC Resolution No. 4411, Revised)
- Action 1.2: Update the LONP for STA and approve a new LONP for BAIFA based on the updated RM3 programming (MTC Resolution No. 4412, Revised)

Group 2: Exchange Funds between CCCGP and Federal Discretionary Funds

- Action 2.1: Update the Core Capacity Challenge Grant Program to reflect the revised funding mix to AC Transit (MTC Resolution No. 4123, Revised\*)
- Action 2.2: Reduce CCCGP bridge toll project savings programmed to AC Transit by \$4.7 million, and program and allocate the I-80 managed lanes project for \$4.7 million (MTC Resolution No. 4169, Revised)
- Action 2.3: Program \$4.7 million to AC Transit in federal discretionary funds originally earmarked for the I-80 managed lanes project (MTC Resolution No. 4202, Revised)

Group 3: Formalize Funding Agreements and Exchange Program

- Action 3.1: Approve funding agreement for the repayment of unrestricted funds to MTC by STA (MTC Resolution No. 4479) and BAIFA (MTC Resolution No. 4480)
- Action 3.2: Include funds from funding agreements in Exchange Program (MTC Resolution No. 3989, Revised)

The agreements in Action 3.1 outline the terms and conditions under which MTC is to provide bridge toll savings funds, in exchange for STA and BAIFA unrestricted funds, which could include funds paid to STA/BAIFA from the RM3 LONP. Highlights of the agreements include:

- Total amount not to exceed \$4.7 million (roughly \$1.8 million for STA and \$2.8 million for BAIFA).

- STA and BAIFA to repay MTC with unrestricted funds that may be used by MTC anywhere within the region.
- STA and BAIFA are not required to repay these funds if the pending litigation is not resolved in favor of allowing disbursement of RM3 funds.

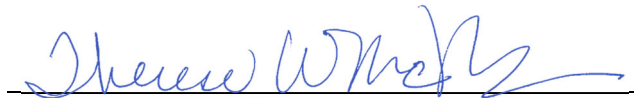
The STA/BAIFA unrestricted funds will be placed into the MTC Exchange Account for programming to projects at the discretion of the Commission.

**Issues:** The exchange assumes RM3 is resolved in favor of allowing disbursement of RM3 funds.

If the pending litigation is not resolved in favor of allowing disbursement of RM3 funds, the bridge toll savings funds would not be required to be paid by BAIFA. While risk of non-repayment exists, the trade-off is that a regionally significant project will be able to proceed with federal funds that leverage substantial state competitive funding.

**Recommendation:** Staff requests approval of BAIFA Resolution No. 23 requesting a RM3 LONP from MTC for the Solano I-80 Express Lanes project and that the Executive Director or her designee be authorized to enter into a funding agreement for the repayment of unrestricted funds to MTC.

**Attachments:** BAIFA Resolution No. 23 requesting a RM3 LONP from MTC for the Solano I-80 Express Lanes project.

  
Therese W. McMillan

Date: July 28, 2021  
Referred by: BAIFA

ABSTRACT

BAIFA Resolution No. 23

This resolution approves a Regional Measure 3 (RM3) Letter of No Prejudice (LONP) from the Metropolitan Transportation Commission (MTC) for the Solano I-80 Express Lanes project.

The resolution contains the following attachments:

Attachment A – LONP Request Form

Attachment B – Initial Project Report

Attachment C – Cash Flow

Further discussion of this action is contained in the BAIFA Summary Sheet dated July 28, 2021.

Date: July 28, 2021  
Referred by: BAIFA

**Re: RM3 Implementing Agency Resolution of Project Compliance – Letter of No Prejudice Request**

**BAY AREA INFRASTRUCTURE FINANCE AUTHORITY  
RESOLUTION NO. 23**

**Project Title: Solano I-80 Express Lanes Project**

WHEREAS, SB 595 (Chapter 650, Statutes 2017), commonly referred as Regional Measure 3, identified projects eligible to receive funding under the Regional Measure 3 Expenditure Plan; and

WHEREAS, the Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for Regional Measure 3 funds, pursuant to Streets and Highways Code Section 30914.7(a) and (c); and

WHEREAS, MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for Regional Measure 3 funding; and

WHEREAS, Letter of No Prejudice (LONP) requests to MTC must be submitted consistent with procedures and conditions as outlined in Regional Measure 3 Policies and Procedures (MTC Resolution No. 4404); and

WHEREAS, BAIFA is an eligible sponsor of transportation project(s) in the Regional Measure 3 Expenditure Plan; and

WHEREAS, the Solano I-80 Express Lanes Project is eligible for consideration in the Regional Measure 3 Expenditure Plan, as identified in California Streets and Highways Code Section 30914.7(a) and programmed in Programming of Regional Measure 3 Capital Projects Sponsored or Co-Sponsored by MTC or BATA (MTC Resolution No. 4411); and

WHEREAS, the Regional Measure 3 LONP request, as set forth in attachments A, B, and C to this resolution, lists the project, purpose, schedule, budget, expenditure and cash flow plan

for which BAIFA is requesting that MTC issue an LONP for Regional Measure 3 funds; now, therefore, be it

RESOLVED, that BAIFA, and its agents shall comply with the provisions of the Metropolitan Transportation Commission's Regional Measure 3 Policies and Procedures; and be it further

RESOLVED, that BAIFA will fund the scope of work covered under the LONP with Bay Area Toll Authority Transit Core Capacity Challenge Grant Funds; and be it further

RESOLVED, that BAIFA proceeds with this scope of work at-risk, in the event that RM3 funds do not become available for allocation; and be it further

RESOLVED, that BAIFA will only be eligible for reimbursement for this scope of work from RM3 funds following an allocation by MTC, for expenses incurred following the date of the LONP approval; and be it further

RESOLVED, that BAIFA certifies that the project is consistent with the Regional Transportation Plan (RTP); and be it further

RESOLVED, that the year of funding for any design, right-of-way and/or construction phases has taken into consideration the time necessary to obtain environmental clearance and permitting approval for the project; and be it further

RESOLVED, that the Regional Measure 3 phase or segment is fully funded, and results in an operable and useable segment; and be it further

RESOLVED, that BAIFA approves the LONP request and updated Initial Project Report, as set forth in Attachments A and B to this resolution; and be it further

RESOLVED, that BAIFA approves the cash flow plan, as set forth in Attachment C to this resolution; and be it further

RESOLVED, that BAIFA has reviewed the project needs and has adequate staffing resources to deliver and complete the project within the schedule set forth in the LONP request and updated Initial Project Report, as set forth in Attachments A and B to this resolution; and, be it further

RESOLVED, that BAIFA is an eligible sponsor of projects in the Regional Measure 3 Expenditure Plan, in accordance with California Streets and Highways Code 30914.7(a); and be it further

RESOLVED, that BAIFA is authorized to submit an application for an LONP request for Regional Measure 3 funds for (project name) in accordance with California Streets and Highways Code 30914.7(a); and be it further

RESOLVED, that BAIFA certifies that the projects and purposes for which RM3 funds are being requested is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.) and if relevant the National Environmental Policy Act (NEPA), 42 USC Section 4-1 et. seq. and the applicable regulations thereunder; and be it further

RESOLVED, that there is no legal impediment to BAIFA making LONP requests for Regional Measure 3 funds; and be it further

RESOLVED, that there is no pending or threatened litigation which might in any way adversely affect the proposed project, or the ability of BAIFA to deliver such project; and be it further

RESOLVED, that BAIFA shall indemnify and hold harmless MTC, BATA, their Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of BAIFA, its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of RM3 funds. BAIFA agrees at its own cost, expense, and risk, to defend any and all claims, actions, suits, or other legal proceedings brought

or instituted against MTC, BATA, and their Commissioners, officers, agents, and employees, or any of them, arising out of such act or omission, and to pay and satisfy any resulting judgments. In addition to any other remedy authorized by law, so much of the funding due under any future allocation of RM3 funds to this scope as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages, and be it further

RESOLVED, that BAIFA shall, if any revenues or profits from any non-governmental use of property (or project) that those revenues or profits shall be used exclusively for the public transportation services for which the project was initially approved, either for capital improvements or maintenance and operational costs, otherwise the Metropolitan Transportation Commission is entitled to a proportionate share equal to MTC's percentage participation in the projects(s); and be it further

RESOLVED, that assets purchased with RM3 funds including facilities and equipment shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for its useful life, that the Metropolitan Transportation Commission (MTC) shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the Fair Market Value of the said facilities and equipment at the time the public transportation uses ceased, which shall be paid back to MTC in the same proportion that Regional Measure 3 funds were originally used; and be it further

RESOLVED, that following an allocation of RM3 funds for this scope of work BAIFA shall post on both ends of the construction site(s) at least two signs visible to the public stating that the Project is funded with Regional Measure 3 Toll Revenues; and be it further

RESOLVED, that BAIFA authorizes its Executive Director, or her designee to execute and submit an LONP request for the construction phase with MTC for Regional Measure 3 funds in the amount of \$31,276,000, for the project, purposes and amounts included in the project application, as set forth in Attachments A, B and C to this resolution; and be it further

RESOLVED, that the Executive Director or her designee is hereby delegated the authority to make non-substantive changes or minor amendments to the LONP request, IPR, or Cash Flow, as set forth in Attachments A, B and C to this resolution, as she deems appropriate.



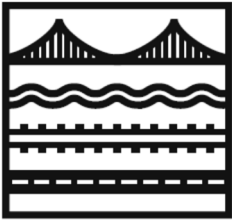
RESOLVED, that a copy of this resolution shall be transmitted to MTC in conjunction with the filing of the BAIFA application referenced herein.

BAY AREA INFRASTRUCTURE FINANCING  
AUTHORITY

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Alfredo Pedroza, Chair

The above resolution was entered into by the Bay Area Infrastructure Financing Authority at a regular meeting of the Board held in San Francisco, California and at other remote locations, on July 28, 2021.



# Regional Measure 3 LONP Request

## SB 595 Project Information

Project Number	2
Project Title	Bay Area Corridor Express Lanes
Project Funding Amount	\$300,000,000

## Subproject Information

Subproject Number	2.1
Subproject Title	I-80 Express Lanes in Solano County
Subproject Funding Amount	\$101,700,000

## I. RM3 LONP Request Information

**Describe the scope of the deliverable phase requested for LONP. Provide background and other details as necessary.**

Delivery of the toll system and communications backhaul network for the Solano County I-80 Managed Lanes Project from Red Top Road to I-505.

Project phase being requested	CON
RM3 funding amount planned for this phase	\$31,276,000
Substitute funding source (if multiple, list amounts)	BATA Core Capacity Challenge Grant
Are there other fund sources involved in this phase?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Date of anticipated Implementing Agency Board approval of RM3 IPR resolution for the allocation being requested	July 28, 2021

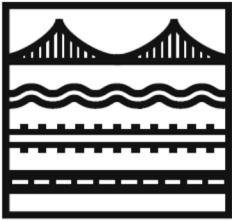
Note: LONP requests are recommended to be submitted to MTC staff for review sixty (60) days prior to action by the Implementing Agency Board

**Describe your plan for fully funding this project in the case that RM3 funding is not made available. This includes funding through construction if the LONP request is for an earlier phase.**

BAIFA will work with local, regional, and State funding partners to determine the feasibility of funding the project from other sources of funding.

**List any other planned bridge toll allocation requests in the next 12 months**

None planned at this time.



# Regional Measure 3

## Initial Project Report

### *Subproject Details*

#### SB 595 Project Information

Project Number	2
Project Title	Bay Area Corridor Express Lanes
Project Funding Amount	\$300,000,000

#### Subproject Information

Subproject Number	2.1
Subproject Title	I-80 Express Lanes in Solano County
Subproject Funding Amount	\$101,700,000

#### I. Overall Subproject Information

##### a. Subproject Sponsor / Co-sponsor(s) / Implementing Agency

Solano Transportation Authority (STA) is the project sponsor and implementing agency in partnership with BAIFA and Caltrans.

##### b. Detailed Subproject Description *(include definition of deliverable segment if different from subproject)*

The proposed project will construct managed lanes on westbound and eastbound I-80 to reduce public transit travel times, increase vehicle and passenger throughput, and decrease congestion. From Red Top Road to just east of Air Base Parkway, the project will convert the existing high-occupancy vehicle (HOV) lanes to express lanes. From just east of Air Base Parkway to east of I-505, the project will widen I-80 to accommodate managed lanes. The project will install static and dynamic overhead signs, electronic tolling equipment, median lighting, toll collection subsystems, electrical and communication conduits, and traffic control devices. The project will also extend an existing multiuse (Class I) trail across I-80 at Ulatis Creek. The project corridor is approximately 18 miles.



**c. Impediments to Subproject Completion**

Several BAIFA contracts, including the that of the toll system integrator, are existing contracts that are not federalized. Should BAIFA be required to use federal funds, these contracts would be required to be federalized or may be required to be reprocured.

**d. Risk Management** *(describe risk management process for project budget and schedule, levels of contingency and how they were determined, and risk assessment tools used)*

BAIFA manages risk at both the program and contract level by identifying risks that could negatively impact the program's cost and schedule, and assigning responsibility to the person best positioned to manage each risk. Risks managed at the contract level are associated with contingency funding authorized by BAIFA for specific contracts. Risks managed at the program level would draw upon the program contingency line item in the Express Lanes Expenditure Plan. Staff regularly review the risk exposure and mitigation plans at both the contract and program level

**e. Operability** *(describe entities responsible for operating and maintaining project once completed/implemented)*

BAIFA will be responsible for operating and maintaining the toll system equipment and fiber communications backhaul network. BAIFA and the California Department of Transportation (Caltrans) share responsibility for civil roadway maintenance as outlined in their cooperative agreement.

**f. Project Graphic(s)** *(include below or attach)*





## II. Subproject Phase Description and Status

### a. Environmental/Planning

Does NEPA apply? Yes ☒ No ☐

The environmental document, an Mitigated Negative Declaration/Finding of No Significant Impact (ND/FONSI), for the SOL I-80 Managed Lanes Project was approved in December 2015. Caltrans is the CEQA and NEPA lead agency for this project.

### b. Design

Final Design was essentially completed for the SOL I-80 Managed Lanes in spring 2018 and put on the shelf, awaiting funding for construction. The Plans, Specifications, and Estimate and Permits are being updated and Ready to List (RTL) is scheduled for July 2021.

### c. Right-of-Way Activities / Acquisition

Complete

### d. Construction / Vehicle Acquisition / Operating

The civil construction is scheduled to be Ready to List by Caltrans in July 2021.

## III. Subproject Schedule

Phase-Milestone	Planned	
	Start Date	Completion Date
Environmental Studies, Preliminary Eng. (ENV / PE / PA&ED)	Jan 2011	Dec 2015
Final Design - Plans, Specs. & Estimates (PS&E)	Jan 2016	Jun 2021
Right-of-Way Activities /Acquisition (R/W)	Jan 2017	Apr 2021
Construction (Begin – Open for Use) / Acquisition (CON)	Sep 2021	Dec 2024



## IV. Subproject Budget

### Capital

<b>Subproject Budget</b>	<b>Total Amount - Escalated to Year of Expenditure (YOE)- (Thousands)</b>
Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)	\$10,900
Design - Plans, Specifications and Estimates (PS&E)	\$23,500
Right-of-Way Activities /Acquisition (R/W)	\$3,200
Construction / Rolling Stock Acquisition (CON)	\$245,000
Total Project Budget (in thousands)	\$282,600

<b>Deliverable Segment Budget</b> (if different from subproject budget)	<b>Total Amount - Escalated to Year of Expenditure (YOE)- (Thousands)</b>
Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)	
Design - Plans, Specifications and Estimates (PS&E)	
Right-of-Way Activities /Acquisition (R/W)	
Construction / Rolling Stock Acquisition (CON)	\$31,276
Total Project Budget (in thousands)	\$31,276

<b>Operating</b>	<b>Total Amount - Escalated to Year of Expenditure (YOE)- (Thousands)</b>
Annual Operating Budget	N/A



## V. Subproject Funding

*Please provide a detailed funding plan in the Excel portion of the IPR. Use this section for additional detail or narrative as needed and to describe plans for any "To Be Determined" funding sources, including phase and year needed.*

Excel Attachment Included ☒

## VI. Contact/Preparation Information

### Contact for Project Sponsor

Name: Janet Adams

Title: Deputy Executive Director/Director of Projects

Phone: (707) 434-6010

Email: [jadams@sta.ca.gov](mailto:jadams@sta.ca.gov)

Mailing Address: One Harbor Center, Suite 130, Suisun City, CA 94585

### Person Preparing Initial Project Report (if different from above)

Name: Stephen Wolf

Title: Assistant Director, Bay Area Infrastructure Finance Authority

Phone: 415-778-5368

Email: [swolf@bayareametro.gov](mailto:swolf@bayareametro.gov)

Mailing Address: 375 Beale St, Ste. 800, SF, CA 94105



**Regional Measure 3  
Initial Project Report - Subproject Report  
Funding Plan**

Project Title:		
Subproject Title	Sol I-80 Express Lanes	
Project/Subproject Number:	2.1	
Total RM3 Funding:	\$	101,700

(add rows as necessary)

**CAPITAL FUNDING**

Funding Source	Phase	Committed? (Yes/No)	Total Amount (\$ thousands)	Amount Expended (\$ thousands)	Amount Remaining (\$ thousands)
	ENV				\$ -
Bridge Tolls		Yes	\$ 10,900		\$ 10,900
					\$ -
					\$ -
					\$ -
					\$ -
ENV Subtotal			\$ 10,900	\$ -	\$ 10,900
	PSE				\$ -
Bridge Tolls		Yes	\$ 3,570		\$ 3,570
BAIFA		Yes	\$ 14,830		\$ 14,830
Federal and State		Yes	\$ 5,100		\$ 5,100
					\$ -
					\$ -
PSE Subtotal			\$ 23,500	\$ -	\$ 23,500
	ROW				\$ -
BAIFA		Yes	\$ 3,200		\$ 3,200
					\$ -
					\$ -
					\$ -
					\$ -
ROW Subtotal			\$ 3,200	\$ -	\$ 3,200
	CON				\$ -
Federal and State		Yes	\$ 96,600		\$ 96,600
SB1 (TCEP)		Yes	\$ 123,400		\$ 123,400
STIP		Yes	\$ 17,300		\$ 17,300
BAIFA		Yes	\$ 7,724		\$ 7,724
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
CON Subtotal			\$ 245,024	\$ -	\$ 245,024
Capital Funding Total			\$ 282,624	\$ -	\$ 282,624

**OPERATING FUNDING (Annual)**

Funding Source	Phase	Committed? (Yes/No)	Total Amount (\$ thousands)
	Operating		
N/A			
Operating Funding Total			\$ -

ash Flow for RM3 Allocation Request for Construction Phase for the I-80 Managed Lanes Project

	2021	2022				2023				2024			TOTAL
	Oct-Dec	Jan-Mar	Apr-June	July-Sept	Oct-Dec	Jan-Mar	Apr-June	July-Sept	Oct-Dec	Jan-Mar	Apr-June	July-Sept	
I-80 Managed Lanes - Construction Phase	\$ 4,946	\$ 9,891	\$ 19,782	\$ 19,782	\$ 34,071	\$ 34,071	\$ 34,071	\$ 34,071	\$ 19,782	\$ 19,782	\$ 9,891	\$ 4,946	\$ 245,086

	FY22	FY23	FY24	FY25	TOTAL
BAIFA Deliverable Segment	\$2,294	\$15,809	\$10,976	\$2,621	\$31,700