

Bay Area Infrastructure Financing Authority BAIFA

November 17, 2021

Agenda Item 4c - 21-1373

Future BAIFA Roles and Opportunities

Subject:

A summary of important roles the Bay Area Infrastructure Financing Authority (BAIFA) could play in State Route 37 tolling and transportation financing and a proposed approach to structuring BAIFA so it may fill those roles.

Background:

The Bay Area Infrastructure Financing Authority (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 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 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 20 months on these topics underscores calls to action and inform staff's proposed 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.

Proposed Approach:

BAIFA could be restructured to serve as a regional conduit financing entity and the SR 37 tolling authority while executing its current express lanes responsibilities. The recommended restructuring would be:

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

A Tolling Committee of the Authority would be 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.

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. 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.

While staff recommends the approach described above, MTC and BATA could pursue other approaches to create a SR 37 tolling authority and regional transportation financing entity. Staff has identified two alternative approaches. However, both have higher administrative impacts, and neither promotes seamlessness to the degree of staff's proposed approach.

- Alternative 1: 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 2: 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.

Issues:

Staff anticipates bringing two major actions to BAIFA for approval in the first half of 2022. Staff will ask BAIFA to hold a public hearing in early 2022 and consider an amendment to BAIFA's Toll Facility Ordinance to enable the Express Lanes Toll Discount Pilot and to reduce toll violation penalties to be consistent with BATA. (See Agenda Item 4b.) Should MTC approve staff's proposed approach, staff recommends MTC and BATA act to amend the BAIFA Joint Powers Agreement after the toll ordinance amendment becomes effective, 30 days following BAIFA approval.

In addition, staff expects to ask BAIFA to authorize the BART car financing in Spring 2022 so that proceeds are available to BART in summer 2022 according to BART's current schedule for purchasing the replacement rail cars. Ideally, BAIFA's actions on the BART car financing would be done through the new board structure. This leaves a narrow but feasible window for MTC and BATA to stand up a new BAIFA board structure.

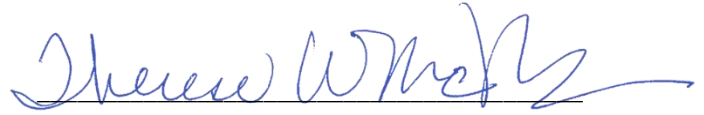
Next Steps:

This is an information item, and staff is looking for Authority input to establish next steps. BAIFA may wish to take this item up again in December to make a recommendation to MTC. Ideally, MTC would identify the regional tolling authority for State Route 37 in January to align with Senator Dodd's expected introduction the State Route 37 legislation in the first months of 2022.

Attachments:

- Attachment A: BAIFA History and Current Responsibilities

- Attachment B: Spring 2020 Discussion of Future BAIFA Roles
- Attachment C: Presentation

A handwritten signature in blue ink, appearing to read "Therese W. McMillan", with a long horizontal flourish extending to the right.

Therese W. McMillan

Attachment A

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).

Attachment B

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 8th 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 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.