BAY AREA TOLL AUTHORITY

Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700
TEL 510.817.5700
TDD/TTY 510.817.5769
FAX 510.817.7848
E-MAIL info@mtc.ca.gov
WEB www.mtc.ca.gov

Memorandum

TO: BATA Oversight Committee DATE: February 27, 2013

FR: Executive Director W. I. 1253

RE: BATA Resolution No. 70, Revised - Amend the Bay Area Infrastructure Financing Authority (BAIFA) Board

Under this item, staff requests the BATA Oversight Committee to refer BATA Resolution No. 70, Revised, to the Bay Area Toll Authority (BATA) to revise the Bay Area Infrastructure Financing Authority (BAIFA) governing board membership.

Background

This item was presented for information at the February BATA Oversight and MTC Administrative Committees. MTC secured from the California Transportation Commission (CTC) authorization to develop and operate a 270-mile Regional Express Lane Network (Network) in October 2011, as shown in the attached slides. MTC staff has — in cooperation with Caltrans and local partner agencies in Alameda, Contra Costa, and Solano counties — initiated environmental studies, toll systems development and operations planning for an initial set of segments scheduled to open in 2015. In order to proceed, staff recommends that (1) MTC and BATA amend the composition of the BAIFA governing board and (2) MTC and BAIFA enter into an agreement through which MTC would delegate to BAIFA MTC's responsibility for the development, operation, procurement, installation, maintenance and financing of the Network addressed in the 2011 CTC action. Staff presented this recommendation for information in February and is now seeking approval for the necessary actions by MTC and BATA.

Action 1: MTC Approves MTC Resolution No. 3769, Revised and BATA Approves BATA Resolution No. 70, Revised. Both to amend BAIFA Governing Board Membership

BAIFA is a joint exercise of powers agency created by MTC and BATA in 2006 (and amended in 2011) for the purpose of financing the state contribution to the toll bridge seismic retrofit program and "to plan, develop and fund transportation and related projects." The current structure of the six-member BAIFA governing board reflects BAIFA's prior and current task of financing the seismic program: MTC chair and vice chair; BATA Oversight Committee chair and vice chair; MTC Programming and Allocations Committee chair and vice chair.

In preparation for delegation of responsibility for the Network from MTC to BAIFA, staff recommends MTC and BATA revise the BAIFA governing board membership as shown below:

Five Voting Members
- MTC Chair
- BATA Oversight Committee Chair
- Alameda County Commissioner
- Contra Costa County Commissioner
- Solano County Commissioner

One Non-Voting Member
- Business Transportation & Housing Agency Commissioner

The proposed BAIFA board is a balanced approach that reflects the interests of MTC, BATA and Caltrans while guaranteeing a seat at the table for each of the three counties in the Network. This arrangement acknowledges local investments in the existing high-occupancy vehicle (HOV) system through county transportation sales taxes. At the same time, MTC and BATA will retain responsibility for determining membership of the governing board. While the Valley Transportation Authority is not represented on the proposed BAIFA board at this time, there will be opportunities to coordinate at the staff and board level. In addition, MTC and BATA can adjust the governing board if the Network grows in scope, either through agreements with other Bay Area express lane operators or through pursuit of additional authority for express lanes on new travel corridors.

The proposed revision to the governing board is not expected to affect BAIFA's ability to meet its current obligations. As of January 2013, BAIFA has $325 million in outstanding bonds, which will mature by August 2017. These bonds are payable solely from state revenue sources and will not be affected by BAIFA's assumption of responsibility for the Regional Express Lane Network.

Action 2: MTC Approves Resolution No. 4087 - Consent to BAIFA Assuming Express Lane Network Responsibilities (For MTC action only; the following is provided as information for BATA)

At the time MTC applied to the CTC in September 2011, MTC and BATA amended the BAIFA joint exercise of powers agreement to include activities related to development, operation and financing of express lanes. Staff now recommends MTC authorize a cooperative agreement to delegate MTC's authority to BAIFA to develop and operate the Network. (As per the CTC's 2011 action, this includes administration and operation of a toll-based value pricing program.) See Attachment 1 for a list of policy decisions associated with these responsibilities, ranging from deciding which projects get built first to what toll rates are charged on the new lanes.

In addition, the cooperative agreement would allow BAIFA to secure funds for the Network. This includes taking actions that may be necessary to secure bonding and tolling authority for the Network. As such, BAIFA could act as the project sponsor to apply for bonding and tolling authority from the California Transportation Financing Authority (CTFA), which was created by the Legislature in 2009 (AB 798) to enhance the public sector's ability to construct and finance transportation projects including express lanes. Alternatively, BAIFA could pursue other avenues to obtain bonding and tolling authority including legislative or judicial actions such as a validation action. Under a validation action, BAIFA effectively would take itself to court to confirm its authority to finance the Network.

BAIFA brings the strengths of MTC and BATA to the project, while protecting both entities:

- Start-up toll operations such as an express lane network carry a certain amount of inherent risk that initial traffic demand may not meet projections. Through BAIFA, MTC can protect itself and regional transportation funds in the event of any financial shortfalls associated with the express lanes.
- Several of the corridors feed directly into the state-owned toll bridges, giving BATA a direct interest in the development and operation of the Network.
- BATA may make contributions, loans or make other advances on projects consistent with BATA's existing statutory authority.

At a later date, staff anticipates BAIFA will execute a cooperative agreement with BATA for services related to the toll system. At a minimum, BATA will manage all the FasTrak® accounts, as required by state law. In addition, staff is considering what additional contributions BATA could make, such as providing the toll system hardware and software.

Timeline

The timeline and actions for BATA, MTC and BAIFA are summarized in Attachment 2.

Recommendation

Staff request that this Committee refer BATA Resolution No. 70, Revised, to the BATA for approval.

Steve Heminger

Attachments

1. Policy Decisions and Responsibilities Associated with the MTC Program: Development, Operations and Financing Regional Express Lane Network
2. Recommended Actions for BATA, MTC and Bay Area Infrastructure Financing Authority (BAIFA) and Associated Timeline
3. BATA Resolution No. 70, Revised (BAIFA Joint Exercise of Powers Agreement)

Attachment 1

Policy Decisions and Responsibilities Associated with the Network: Development, Operation and Financing Regional Express Lane Network

1. **Approve phasing and financing plans**
   - Determine the order in which portions of the Network will be implemented and the manner and timing in which they will be funded.

2. **Adopt business rules and tolling, and operating policies**
   - Establish toll collection methods.
   - Establish violation procedures and penalties.
   - Set hours of operation.
   - Establish toll rates and requirement for toll-free travel (HOV2 or HOV3+).

3. **Design, procure, install and construct the express lanes and toll system**
   - Secure all necessary environmental clearances, permits and project approvals for improvements to the roadway as well as implementation of the toll system.
   - Contract with consultants and vendors for design, installation and construction of the roadway and toll system elements, which may involve modifications to roadways and structures, installation of signs and electronic toll collection equipment, and development of toll collection software.
   - Potentially, enter into public-private partnerships for delivery of some parts of the Network.

4. **Operate and maintain the express lanes and associated toll system**
   - Ensure the day to day operations of the toll system, including customer education and response to customer inquiries and concerns.
   - Contract with BATA for distribution of toll tags, account management and billing and with the California Highway Patrol for enforcement, as required by statute.
   - Ensure the express lane roadway features, signs, toll equipment and software are maintained and replaced as needed.
   - Enter into agreements with other agencies, and potentially into public-private partnerships for delivery of some express lane operations and maintenance.

5. **Obtain bonding and tolling authority as required to provide funds to procure, construct, operate and maintain the project**
   - Potentially, submit an application to the California Transportation Financing Authority (CTFA) for bonding and/or tolling authority for the Network.
   - Potentially, pursue legislative or judicial actions to obtain or confirm bonding and/or tolling authority. This may include validation through the courts of tolling authority conferred through the October 2011 CTC finding.

Attachment 2

Recommended Actions for BATA, MTC and Bay Area Infrastructure Financing Authority (BAIFA) and Associated Timeline

1. **BATA & MTC Information Item**
   February 13, 2013 BATA Oversight & MTC Administration Committees

   Staff presented for information its recommendation that MTC and BATA amend the BAIFA board membership and that MTC would, through a cooperative agreement, assign to BAIFA responsibility to develop and implement the 270-mile Express Lane Network (Network).

2. **BATA and MTC modify BAIFA's governing board**
   March 6, 2013 BATA Oversight & MTC Administration Committees
   March 27, 2013 BATA and MTC

   Modify BAIFA's governing board in the BAIFA Joint Exercise of Powers Agreement by revising BATA Resolution No. 70 (Attachment 3) and MTC Resolution No. 3769 (See the March 6th MTC Administration Committee packet).

3. **MTC authorizes a cooperative agreement with BAIFA for the development, operation and financing of the Network**
   March 6, 2013 MTC Administration Committee
   March 27, 2013 MTC

   Authorize a cooperative agreement between MTC and BAIFA under which MTC will delegate MTC's authority to BAIFA toto develop, procure, install, maintain, finance and operate the Network thereby allowing BAIFA to take all steps necessary to provide funds for the Network (See the March 6th MTC Administration Committee packet).

4. **BAIFA authorizes the cooperative agreement with MTC and revises governing rules**
   April 24, 2013 BAIFA

   Authorize a cooperative agreement between MTC and BAIFA under which BAIFA would assume responsibility for developing, procuring, installing, maintaining, operating and financing the Regional Express Lane Network (See the March 6th MTC Administration Committee packet).

   BAIFA would make appropriate updates to its governing rules in BAIFA Resolution No. 1, including designation of officers and regular meetings, which staff proposes to hold on the same day as the regular Commission and BATA meetings. Staff recommends BAIFA consider these actions in April, following filing with the Secretary of State of the amendments of the BAIFA Joint Exercise of Powers Agreement approved in BATA Resolution No. 70, Revised and MTC Resolution No. 3769, Revised.

Date: July 26, 2006
W.I.: 1254
Referred by: BATA Oversight
Revised: 09/28/11-BATA
Revised: 03/27/13-BATA

ABSTRACT

BATA Resolution No. 70, Revised

This resolution approves a Joint Exercise of Powers Agreement between the Bay Area Toll Authority (BATA) and the Metropolitan Transportation Commission (MTC) for the creation of the Bay Area Infrastructure Financing Authority.

Attachment A to this resolution was revised on September 28, 2011 to amend the Joint Exercise of Powers Agreement to provide for the Bay Area Infrastructure Financing Authority to participate in developing and operating a high-occupancy toll lane facility pursuant to Streets and Highways Code section 149.7.

Attachment A to this resolution was revised on March 27, 2013 to amend the Joint Exercise of Powers Agreement to add officers and change the membership of the Governing Board of the Bay Area Infrastructure Financing Authority.

Discussion of these actions are contained in the Executive Director's Memoranda to BATA, dated September 21, 2011 and to the BATA Oversight Committee dated July 5, 2006, September 7, 2011 and February 27, 2013.

Date: July 26, 2006
W.I.: 1254
Referred by: BATA Oversight

Re: Approval of Joint Exercise of Powers Agreement with the Metropolitan Transportation Commission for the Creation of the Bay Area Infrastructure Financing Authority

BAY AREA TOLL AUTHORITY
RESOLUTION NO. 70

WHEREAS, the Bay Area Toll Authority ("BATA") was created pursuant to Section 30950 of the Streets and Highways Code of the State of California; and

WHEREAS, BATA is a "public agency" within the meaning of Section 6500 of the California Joint Exercise of Powers Act, consisting of Sections 6500 through 6599.3 of the California Government Code, as amended from time to time (the "Joint Powers Act"), and as such may, pursuant to the Joint Powers Act, enter into a joint exercise of powers agreement with one or more other public agencies; and

WHEREAS, the Metropolitan Transportation Commission ("MTC") is the regional transportation planning agency for the San Francisco Bay Area pursuant to California Government Code section 66500 et seq. and is a "public agency" as that term is defined in Section 6500 of the Joint Powers Act; and

WHEREAS, BATA and MTC intend to enter into a joint exercise of powers agreement pursuant to the Joint Powers Act pursuant to which the Bay Area Infrastructure Financing Authority (the "Financing Authority") will be created to, among other things, undertake programs and projects by exercising the common powers of MTC and BATA and the powers separately conferred by law upon the Financing Authority and finance such programs and projects through the issuance of bonds (as that

RESOLVED, that BATA specifically finds and declares that the statements, findings and determinations of BATA set forth in the preambles above and in the Agreement approved herein are true and correct; and be it further

RESOLVED, that BATA hereby authorizes the Executive Director of BATA or the Chief Financial Officer of BATA (each, an "Authorized Representative") to execute and deliver, and the Secretary of BATA to attest and deliver, the Agreement in substantially the form presented to BATA, with such additions thereto or changes therein as the Authorized Representative executing the same, with the advice of General Counsel to BATA may require or approve, the approval of such additions or changes to be conclusively evidenced by the execution and delivery of the Agreement; and be it further

RESOLVED, that the officers and agents of BATA are hereby authorized and directed to take all further actions necessary and convenient to establish the Authority and that all actions heretofore taken by the members of BATA, committees of BATA, and officers and agents of BATA with respect to the Agreement and the formation of the Financing Authority are hereby acknowledged; and, be it further

RESOLVED, that this Resolution shall take effect from and after its adoption.

BAY AREA TOLL AUTHORITY

/s/ Jon Rubin
Jon Rubin, Chair

The above resolution was entered into by the Bay Area Toll Authority at a regular meeting of BATA held in Oakland, California on July 26, 2006

Date: July 26, 2006
W.I.: 1254
Referred by: BATA Oversight
Revised: 09/28/11-BATA
Revised: 03/27/13-BATA

ATTACHMENT A REVISED

JOINT EXERCISE OF POWERS AGREEMENT

between

METROPOLITAN TRANSPORTATION COMMISSION

and

BAY AREA TOLL AUTHORITY

Dated as of August 1, 2006, as amended

Creating the

BAY AREA INFRASTRUCTURE FINANCING AUTHORITY

This JOINT EXERCISE OF POWERS AGREEMENT dated as of August 1, 2006, as amended September 28, 2011 and March 27, 2013 (this "Agreement") between METROPOLITAN TRANSPORTATION COMMISSION ("MTC") and BAY AREA TOLL AUTHORITY ("BATA")

W I T N E S S E T H:

WHEREAS, MTC was created pursuant to the Metropolitan Transportation Commission Act (California Government Code section 66500 et seq. (the "MTC Act")) and has the power to accept grants, contributions, and appropriations from any public agency, private foundation, or individual under California Government Code section 66506 and to seek to assist in the development of adequate funding sources to develop, construct, and support transportation projects that it determines essential pursuant to California Government Code section 66530; and

WHEREAS, BATA was created pursuant to Chapter 4.3 of Division 17 of the California Streets and Highways Code (California Streets and Highways Code section 30950 et seq. (the "BATA Act")) and has the power under California Streets and Highways Code section 30951 to apply for, accept, receive, and disburse grants, loans, and other assistance from any agency of the United States or of the State of California, and to plan projects within its jurisdiction under California Streets and Highways Code section 30950.3; and

WHEREAS, pursuant to the California Joint Exercise of Powers Act, consisting of Sections 6500 through 6599.2 of the California Government Code, as amended from time to time (the "Joint Powers Act"), two or more public agencies may enter into an agreement to establish an agency to exercise any power common to the contracting parties; and

WHEREAS, each of MTC and BATA is a "public agency" as that term is defined in Section 6500 of the Joint Powers Act; and

WHEREAS, a public entity established by MTC and BATA pursuant to the Joint Powers Act is empowered, in exercising the authorized common powers of its members and the powers separately conferred by statute upon such entity, to undertake the activities specified in this Agreement, including without limitation, the issuance of Bonds (as used herein "Bonds" means bonds as defined in Section 6585(c) of the Joint Powers Act or issued in accordance with the California Transportation Financing Authority Act (Division 3 of Title 6.7 of the Government Code, the "CTFA Act") or other applicable provisions of law); and

WHEREAS, each of MTC, with the approval of MTC Resolution No. 3769 adopted on July 26, 2006, as amended, and BATA, with the approval of BATA Resolution No. 70, adopted on July 26, 2006, as amended, has determined that it is to the advantage of such public agency and in the public interest of the area and persons served by such public agency, to enter into this Agreement in order to establish an agency (the "Bay Area Infrastructure Financing Authority," "BAIFA" or the "Authority") that will undertake programs and projects, including the development, financing, and operation of high-occupancy toll lanes in MTC's jurisdiction, as herein provided by exercising the common powers of MTC and BATA relating to such programs and projects and such other powers as are granted to the Authority by or pursuant to the Joint

Powers Act, the CTFA Act, Streets and Highways Code section 149.7 (the "Express Lanes Statute"), and other laws;

NOW, THEREFORE, MTC and BATA, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

SECTION 1. PURPOSE.

This Agreement is made pursuant to the Joint Powers Act to provide for the joint exercise of powers common to MTC and BATA and the powers separately conferred by or pursuant to law upon the Authority to plan projects and obtain funding in the form of grants, contributions, appropriations, loans and other assistance from the United States and from the State of California and apply money received to pay debt service on Bonds issued by the Authority to finance or refinance public capital improvements (as defined in the Joint Powers Act) and to develop and operate high-occupancy toll lane facilities pursuant to the Express Lanes Statute and to finance and refinance those facilities pursuant to the Joint Powers Act, the CTFA Act, and other laws. The purpose of this Agreement is to plan, develop, operate, and fund such projects and facilities and to exercise such powers jointly by pooling efforts and activities to achieve those ends. This purpose will be accomplished and said powers exercised in the manner set forth in this Agreement and in accordance with the Joint Powers Act, the CTFA Act, the Express Lanes Statute, and all other applicable laws of the State of California.

SECTION 2. TERM.

This Agreement shall become effective as of the date hereof and shall continue in full force and effect for a period of 50 years from such date unless extended or earlier terminated by a supplemental written agreement of MTC and BATA, provided that this Agreement shall not terminate or be terminated until the date on which: (i) all Bonds issued by the Authority shall have been paid or deemed paid in accordance with the resolution, indenture or other instrument or proceeding authorizing or securing such Bonds (each such resolution, indenture, instrument and proceeding being herein referred to as an "Indenture"); and (ii) all other indebtedness and liabilities incurred by the Authority shall have been paid or provided for. The Authority shall cause all records regarding its formation, existence, operations and proceedings pertaining to its termination to be retained for at least six years following termination of the Authority.

SECTION 3. AUTHORITY.

A. Creation of Authority.

There is hereby created under and pursuant to the Joint Powers Act an authority and public entity, separate and apart from MTC and BATA, to be known as the Bay Area Infrastructure Financing Authority ("BAIFA" or the "Authority"). The Authority's debts, liabilities and obligations shall not constitute debts, liabilities or obligations of MTC or BATA.

Within 30 days after the effective date of this Agreement, or any amendment hereto, the Authority will cause a notice of this Agreement or amendment to be prepared and filed with the office of the Secretary of State of the State of California in the manner set forth in Section 6503.5 of the Joint Powers Act.

B. Governing Board

The Authority shall be administered by a governing board (the "Board"), which shall consist of six members: the chair of MTC; the chair of the BATA oversight committee; the member of MTC appointed by the board of supervisors of Alameda County; the member of MTC appointed by the board of supervisors of Contra Costa County, the member of MTC appointed by the board of supervisors of Solano County; and, as a nonvoting member, the representative appointed to MTC by the secretary of the Business, Transportation and Housing Agency (or any successor agency). If at any time any individual appointed to the Board as the representative of Alameda County, Contra Costa County, Solano County or the Business, Transportation and Housing Agency (or any successor agency) shall become the chair of MTC or of the BATA oversight committee, the board of MTC shall appoint an additional at-large member to serve on the Board for the duration of such period or until MTC, in its sole discretion, replaces such at-large member.

The members of the Board shall serve without compensation, but shall receive reimbursement for actual and necessary expenses incurred in connection with the performance of their duties. However, in lieu of this reimbursement for attendance at Authority or committee meetings, each member may receive a per diem of one hundred dollars ($100), but not to exceed a combined total of five meetings in any one calendar month, plus the necessary traveling expenses as may be authorized by the Authority.

C. Meetings of Board

(1) Regular Meetings and Special Meetings. The Board shall hold at least one regular meeting each year, and, by resolution, may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each such regular meeting shall be fixed by resolution of the Board but may be changed by the chair or vice chair of the Authority upon not less than 48 hours prior notice in order to coordinate the date, hour and place of the meeting with the date, hour and place of an MTC meeting or a BATA meeting. Special meetings of the Board may be called by the chair or the vice chair of the Authority or by a majority of the members of the Board on the date and at the hour and place fixed by notice to all of the members of the Board.

(2) Legal Notice. All regular and special meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (codified at California Government Code sections 54950 and following).

(3) Minutes. The secretary of the Authority shall cause minutes of all meetings of the Board to be kept and shall, as soon as practicable after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to MTC and BATA.

(4) Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business.

D. Officers; Duties

(1) The chair of MTC shall be the chair of the Authority. The chair of the BATA oversight committee shall be the vice chair of the Authority. The Board shall by resolution appoint a secretary of the Authority.

(2) The Chief Financial Officer of MTC is hereby designated as Treasurer of the Authority. The Treasurer is designated as the depositary of the Authority to have custody of all the money of the Authority, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Joint Powers Act.

(3) The Chief Financial Officer of MTC is hereby designated as Auditor of the Authority, and, as such, shall have the powers, duties and responsibilities specified in Section 6505 and Section 6505.5 of the Joint Powers Act. The Auditor shall draw checks to pay demands against the Authority when the demands have been approved by the Authority.

(4) MTC shall determine the charges, if any, to be made against the Authority for the services of the Treasurer and Auditor. MTC may provide staff for the Authority and shall determine the charges to be paid by the Authority for such services.

(5) The Treasurer and Auditor of the Authority are designated as the public officers or persons who have charge of, handle, or have access to any property of the Authority, and such officers shall file an official bond as required by Section 6505.1 of the Joint Powers Act in the amount of $25,000.

(6) The Treasurer of the Authority is hereby authorized and directed to prepare or cause to be prepared a report in writing on the first day of July, October, January, and April of each year to the Board and the Authority, which report shall describe the amount of money held by the Treasurer and Auditor of the Authority for the Authority, the amount of receipts since the last such report, and the amount paid out since the first such report.

(7) The Executive Director of MTC is hereby designated as Executive Director of the Authority.

(8) Each Deputy Executive Director of MTC is hereby designated as a Deputy Executive Director of the Authority.

(9) The General Counsel for MTC shall be and act as General Counsel to the Authority.

(10) The Board shall have the power to appoint such other officers and employees as it may deem necessary.

E. Conflict of Interest Code.

MTC's conflict of interest code shall apply to the Authority.

F. Rules And Regulations.

The Authority may adopt, from time to time, by resolution of the Board, such rules and regulations for the conduct of its meetings and affairs as the Board determines are necessary or convenient.

SECTION 4. POWERS.

The Authority shall have any and all powers that are common powers of MTC and BATA, and the powers separately conferred by law upon the Authority, with respect to obtaining funding in the form of grants, contributions, appropriations, loans and other assistance from the United States and from the State of California and applying money received to pay debt service on Bonds issued by the Authority to finance or refinance public capital improvements (as defined in the Joint Powers Act), to issuing such Bonds, to developing and operating high-occupancy toll lane facilities pursuant to the Joint Powers Act and the Express Lanes Statute and other laws and to finance and refinance those facilities pursuant to the Joint Powers Act, the CTFA Act and other laws. All such powers, whether common to the Parties or separately conferred by or pursuant to law upon the Authority, are specified as powers of the Authority except any such powers which are specifically prohibited to the Authority by applicable law.

The Authority is hereby authorized, in its own name, to do all acts necessary or convenient for the exercise of its powers, including, but not limited to, any or all of the following: to sue and be sued; to make and enter into contracts; to employ agents, consultants, attorneys, accountants, and employees; to acquire, hold or dispose of property, whether real or personal, tangible or intangible, wherever located; to issue Bonds or otherwise incur debts, liabilities or obligations to the extent authorized under the CTFA Act or by the Joint Powers Act, including Article 2 and Article 4 thereof, or any other applicable provision of law and to pledge any grants, contributions, appropriations, loans or other assistance or toll lane facilities or other property or toll revenues or other revenues or the rights thereto as security for such Bonds and other indebtedness; and to receive grants, contributions, appropriations, loans and other assistance from the United States and from the State of California and any other persons, firms, corporations or governmental entities. The Authority shall have all additional powers conferred under the Joint Powers Act or the CTFA Act or implied therefrom.

The Authority shall continue to exercise the powers herein conferred upon it until the end of the term of this Agreement as provided in Section 2.

SECTION 5. MANNER OF EXERCISING POWERS.

To the extent required by the Joint Powers Act, the manner in which the Authority shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which BATA could exercise such powers and perform such duties pursuant to Section 6509 of the Joint Powers Act. The manner in which the Authority shall exercise its powers and perform its duties shall not be subject to any restrictions applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a party to this Agreement or not.

SECTION 6. FISCAL YEAR.

For the purposes of this Agreement, the term "Fiscal Year" shall mean the fiscal year of the Authority being, until changed by resolution of the Board, the period from July 1 to and including the following June 30 except for the first Fiscal Year which shall be the period from the date of this Agreement to and including June 30, 2007.

SECTION 7. CONTRIBUTIONS AND ADVANCES.

Contributions or advances of funds and property may be made to the Authority by MTC and BATA for any of the purposes of this Agreement and shall be deposited by the Authority in a fund hereby authorized to be established and operated by the Authority as the BAIFA Operating Fund. Any such advance may, but need not, be made subject to repayment, and if made subject to repayment shall be repaid in the manner agreed upon by the contributor and the Authority at the time of making such advance. It is mutually understood and agreed that neither MTC nor BATA has any obligation to make advances or contributions to the Authority. MTC and BATA may allow the use of personnel, equipment or property in lieu of other contributions or advances to the Authority. After termination of this Agreement pursuant to Section 2 and prior to any distribution pursuant to Section 8, all unrepaid advances shall be paid and then all contributions shall be repaid.

SECTION 8. DISPOSITION OF ASSETS.

Upon the termination of this Agreement as set forth in Section 2, after payment of all expenses and liabilities of the Authority, all property of the Authority both real and personal shall be distributed to MTC, subject to the provisions of Section 7.

SECTION 9. BONDS.

A. Authority To Issue Bonds.

When authorized by or pursuant to the CTFA Act or the Joint Powers Act or other applicable provisions of law and by resolution of the Board, the Authority may issue Bonds for the purpose of raising funds for the exercise of any of its powers or to otherwise carry out its purposes under this Agreement. Said Bonds shall have such terms and conditions as are authorized by the Board.

B. Bonds Limited Obligations.

The Bonds, including the principal and any purchase price thereof, and the interest and premium, if any, thereon, shall be special obligations of the Authority payable solely from, and secured solely by, the revenues, funds and other assets pledged therefor under the applicable Indenture(s) and shall not constitute a charge against the general credit of the Authority. The Bonds shall not be secured by a legal or equitable pledge of, or lien or charge upon or security interest in, any property of the Authority or any of its income or receipts except the property, income and receipts pledged therefor under the applicable Indenture(s). The Bonds shall not constitute a debt, liability or obligation of the State or any public agency thereof, including MTC and BATA, other than the special obligation of the Authority as described above.

Neither the faith and credit nor the taxing power of the State of California or any public agency thereof, including MTC and BATA, shall be pledged to the payment of the principal or purchase price of, or the premium, if any, or interest on the Bonds nor shall the State of California or any public agency or instrumentality thereof, including MTC and BATA, in any manner be obligated to make any appropriation for such payment. The Authority shall have no taxing power.

No covenant or agreement contained in any Bond or Indenture shall be deemed to be a covenant or agreement of any director, officer, agent or employee of the Authority, in his or her individual capacity and no director or officer of the Authority executing a Bond shall be liable personally on such Bond or be subject to any personal liability or accountability by reason of the issuance of such Bond.

SECTION 10. SWAPS AND OTHER FINANCIAL PRODUCTS.

In the exercise of a common power of MTC and BATA or when the Authority is separately authorized by the Joint Powers Act or other applicable provisions of law, the Authority, when authorized by resolution of the Board, may enter into hedging or other arrangements authorized by California Government Code sections 5920-5923 on terms and conditions authorized by the Board.

SECTION 11. ACCOUNTS AND REPORTS.

A. Books And Records.

All funds of the Authority shall be strictly accounted for in books of account and financial records maintained by the Authority, including a report of all receipts and disbursements. The Authority shall establish and maintain such funds and accounts as may be required by generally accepted accounting principles and by each Indenture for outstanding Bonds (to the extent such duties are not assigned to a trustee for owners of Bonds). The books and records of the Authority shall be open to inspection at all reasonable times by MTC and BATA.

The Authority shall require that each Indenture provide that the trustee appointed thereunder shall establish suitable funds, furnish financial reports and provide suitable accounting procedures to carry out the provisions of such Indenture. Said trustee may be given such duties in said Indenture as may be desirable to carry out the requirements of this Section.

B. Audits.

The Auditor of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Authority in compliance with the requirements of the Joint Powers Act. Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants in making an audit pursuant to this Section, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for that purpose.

C. Audit Reports.

The Treasurer of the Authority, as soon as practicable after the close of each Fiscal Year but in any event within the time necessary to comply with the requirements of the Joint Powers Act shall file a report of the audit performed pursuant to Subsection B of this Section 11 as required by the Joint Powers Act and shall send a copy of such report to public entities and persons in accordance with the requirements of the Joint Powers Act.

SECTION 12. FUNDS.

Subject to the provisions of each Indenture for outstanding Bonds providing for a trustee to receive, have custody of and disburse funds which constitute Authority funds, the Treasurer of the Authority shall receive, have the custody of and disburse Authority funds pursuant to accounting procedures approved by the Board and shall make the disbursements required by this Agreement or otherwise necessary to carry out the provisions and purposes of this Agreement.

SECTION 13. NOTICES.

Notices and other communications hereunder to the parties shall be sufficient if delivered to the clerk or secretary of the governing body of each party.

SECTION 14. WITHDRAWAL

Neither MTC nor BATA may withdraw from this Agreement prior to the end of the term of this Agreement determined in accordance with Section 2.

SECTION 15. INDEMNIFICATION.

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a director, officer, employee or other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a director, officer, employee or other agent of the Authority, against expenses, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith and in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful and, in the case of any action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

SECTION 16. IMMUNITIES.

All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, employees or other representatives of MTC or BATA when performing their respective functions within the territorial limits of their public agency, shall apply to them to the same degree and extent while engaged as a director, officer,

agent, employee or other representative of the Authority or while engaged in the performance of any of their functions or duties under the provisions of this Agreement whether within or outside of the boundaries of MTC or BATA.

SECTION 17. COUNSEL, CONSULTANTS AND ADVISORS.

The Authority may employ the services of independent counsel, including bond and other special counsel, financing, engineering, construction, utility and other consultants and advisors, and accountants and auditors in connection with the programs undertaken pursuant to this Agreement, including the issuance of Bonds and the entry into financial products authorized by Section 10 hereof. The fees and expenses of such counsel, consultants, advisors, accountants and auditors, and the expenses of the Authority in connection with such programs and projects, shall be paid from the proceeds of Bonds or any other unencumbered funds of the Authority available for such purpose.

SECTION 18. AMENDMENTS.

This Agreement shall not be amended, modified, or altered except by a written instrument duly executed by MTC and BATA.

SECTION 19. EFFECTIVENESS.

This Agreement shall become effective and be in full force and effect and a legal, valid and binding obligation of MTC and BATA at 9:00 a.m., California time, on the first date as of which each of MTC and BATA has delivered to the other party an executed counterpart of this Agreement, together with a certified copy of a resolution of the governing body of such party approving this Agreement and the execution and delivery hereof.

SECTION 20. PARTIAL INVALIDITY.

If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

SECTION 21. SUCCESSORS.

This Agreement shall be binding upon and shall inure to the benefit of the successors of MTC and BATA. Except to the extent expressly provided herein, neither party may assign any right or obligation hereunder without the consent of the other.

SECTION 22. MISCELLANEOUS.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Where reference is made to duties to be performed for the Authority by a public official or employee, such duties may be performed by that person's duly authorized deputy or assistant. Where reference is made to actions to be taken by MTC or BATA, such action may be exercised through the officers, staff or employees of MTC or BATA, as the case may be, in the manner provided by law.

The section and subsection headings herein are for convenience only and are not to be construed as modifying or governing the language in the section or subsection referred to.

This Agreement is made in the State of California, under the Constitution and laws of the state and is to be construed as a contract made and to be performed in the State of California.

This Agreement is the complete and exclusive statement of the agreement among the parties with respect to the subject matter hereof, which supersedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement, as amended, to be executed by their proper officers thereunto duly authorized on March 27, 2013.

METROPOLITAN TRANSPORTATION COMMISSION

By_____
Name: Steve Heminger
Title: Executive Director

By_____
Name: Brian Mayhew
Title: Chief Financial Officer

Attest:

By_____
Name: Rosy Leyva
Title: Secretary

BAY AREA TOLL AUTHORITY

By_____
Name: Steve Heminger
Title: Executive Director

By_____
Name: Brian Mayhew
Title: Chief Financial Officer

Attest:

By_____
Name: Rosy Leyva
Title: Secretary

MTC EXPRESS LANE NETWORK

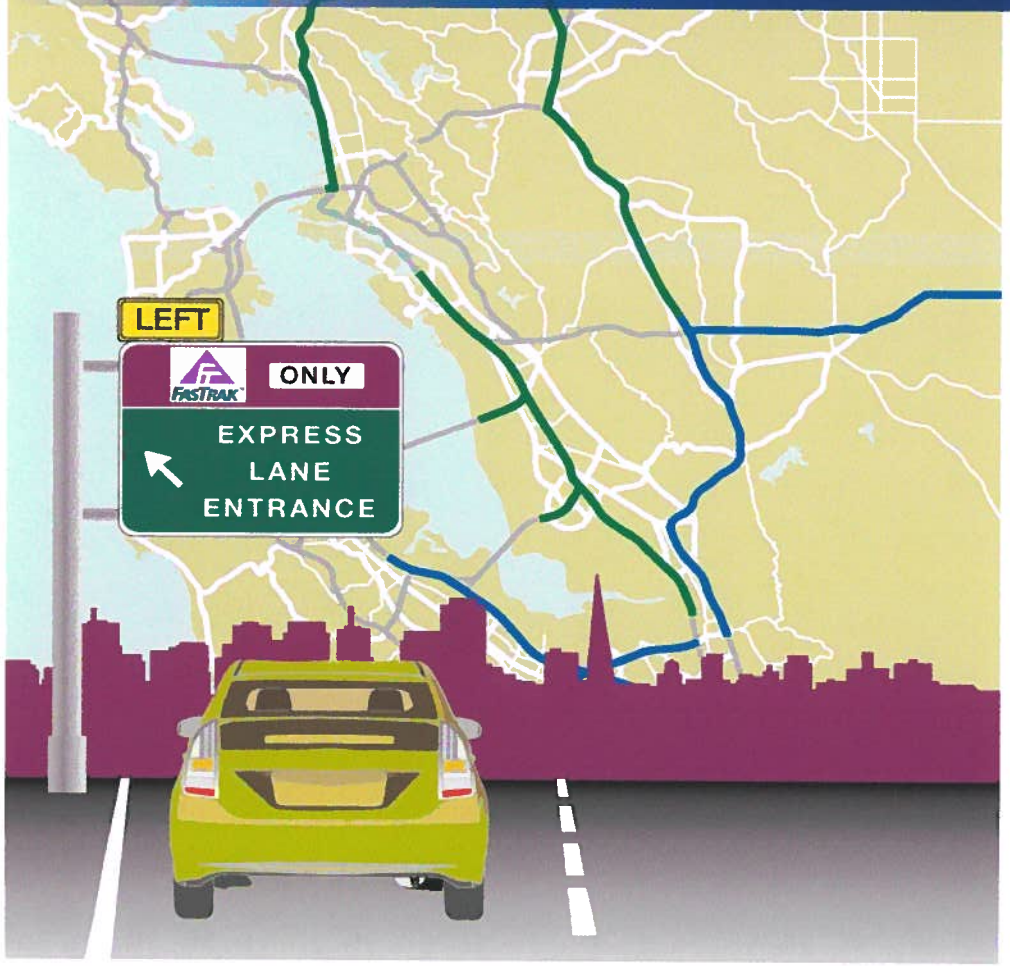
BATA Oversight Committee
and
MTC Administration Committee

March 6, 2013

BAY AREA TOLL AUTHORITY

METROPOLITAN TRANSPORTATION COMMISSION

MTC EXPRESS LANE NETWORK



BATA Oversight Committee
and
MTC Administration Committee

March 6, 2013

BAY AREA TOLL AUTHORITY

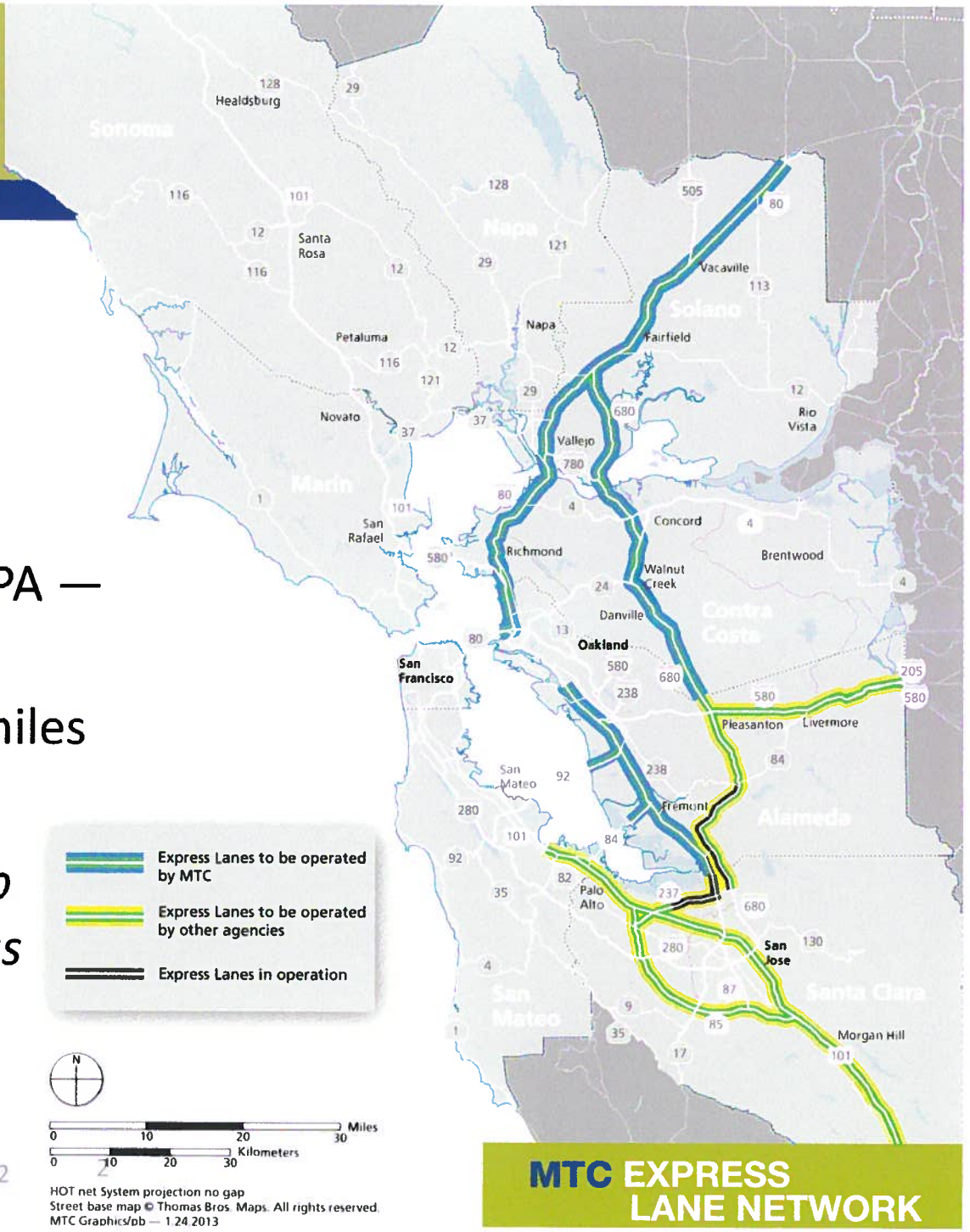
METROPOLITAN TRANSPORTATION COMMISSION

Bay Area Express Lane System

550 miles total

- MTC — 270 miles (Oct. 2011 CTC action)
- Alameda CMA & Sunol JPA — 90 miles
- Santa Clara — VTA 190 miles

All parties are committed to making the system seamless for drivers

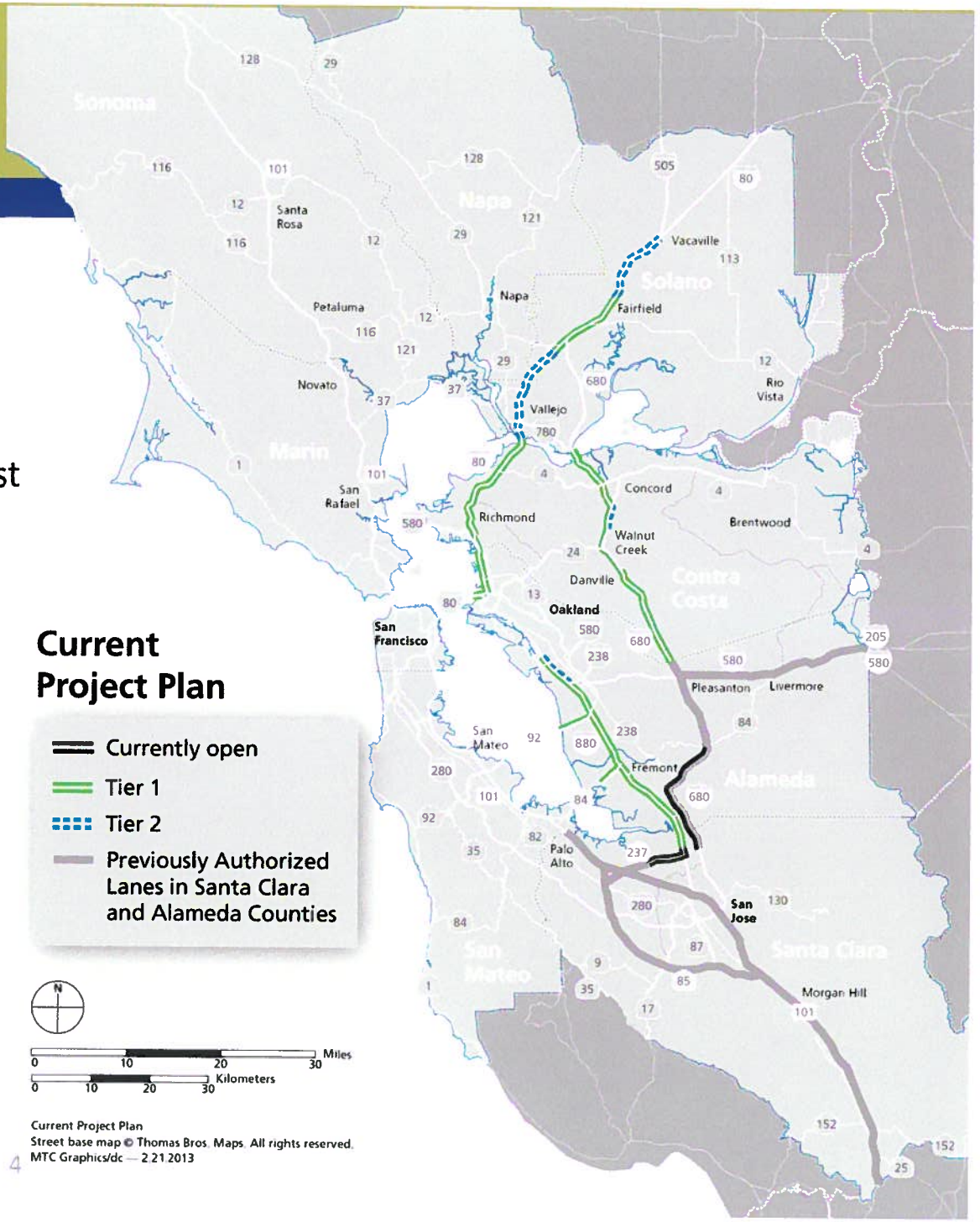


Why Express Lanes?

- Connectivity: Close gaps within existing HOV lane system to serve carpools and buses
- Efficiency: Optimize capacity in Bay Area freeway corridors
- Reliability: Provide a reliable, congestion-free transportation option

Current Project Plan (MTC Network)

1. Conversions first (benefit cost ratio = 5)
   - Low cost & low risk
   - Toll-system comprises most of the investment
   - 150 miles
2. Close gaps, segments with better revenue/cost ratios (benefit cost ratio = 3)
   - 65 miles



Tier 1 Conversions

MTC Network Projects Underway
90 miles open in 2015

In progress

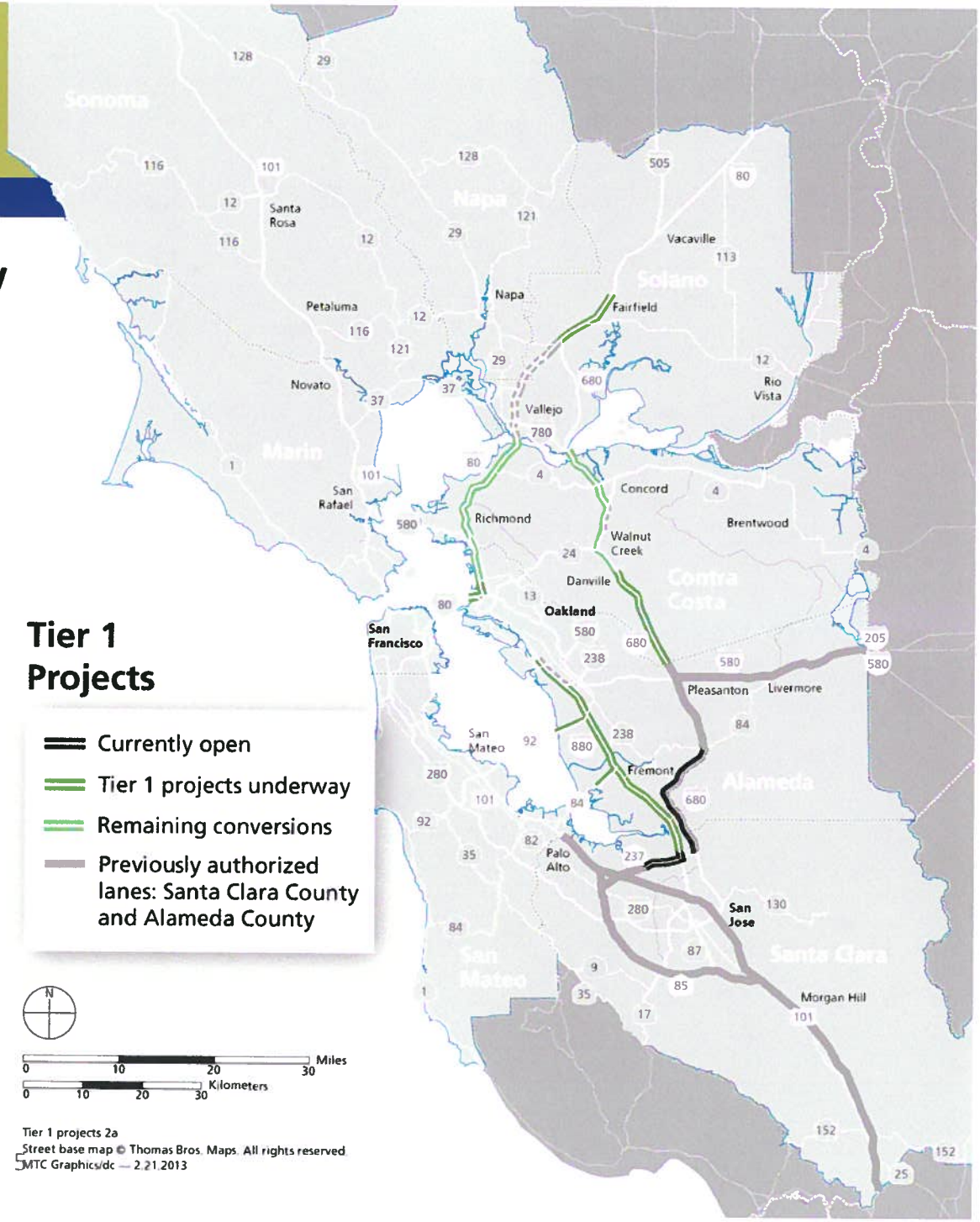
- Toll system concept
- Environmental clearance

Next steps in 2013

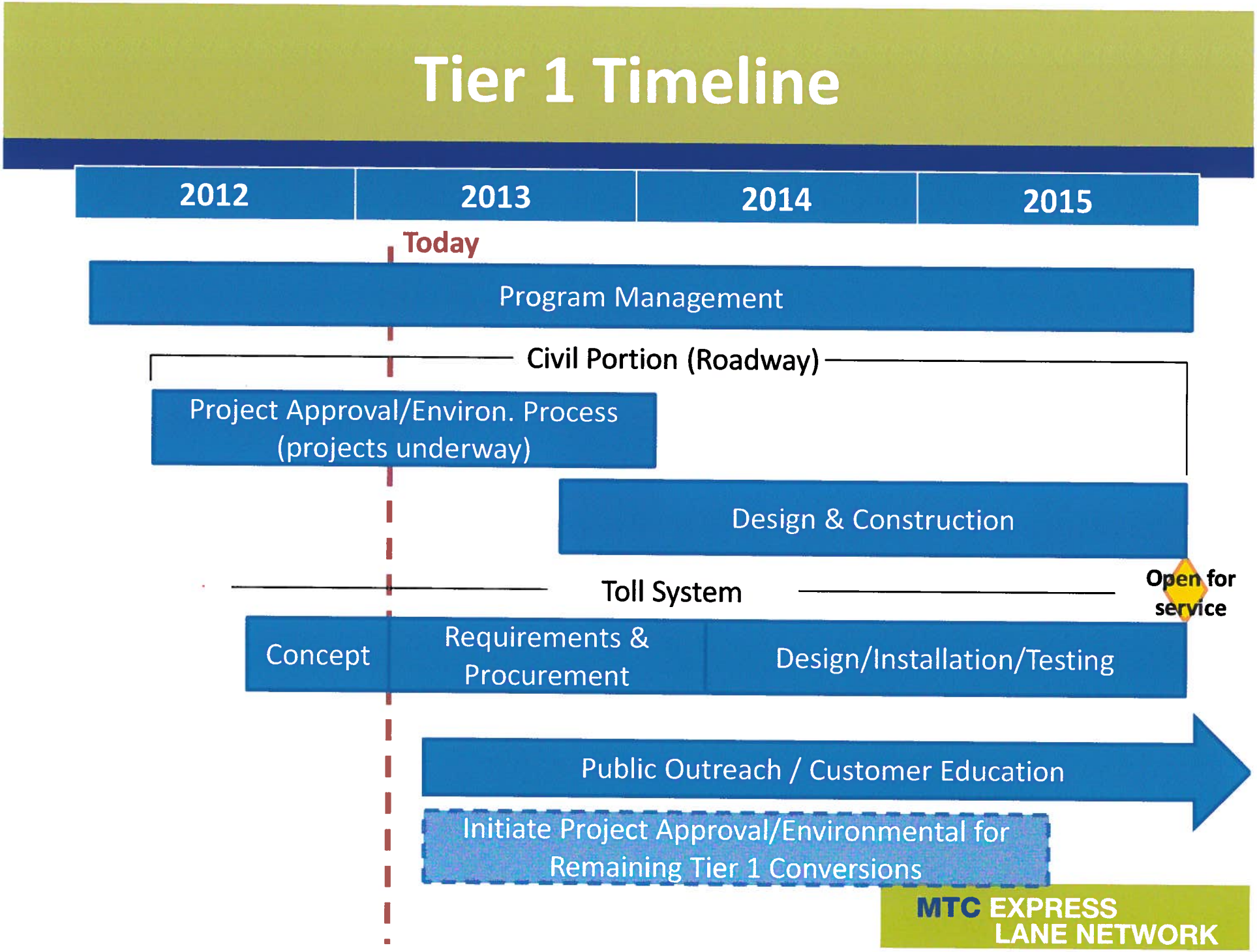
- Toll system requirements & procurement
- Roadway design

Remaining Conversions
60 miles

Secure funding and initiate studies/environmental clearance in 2013



Tier 1 Timeline



Bay Area Infrastructure Financing Authority (BAIFA)

- Created by MTC and BATA in 2006 to finance the state contribution to the toll bridge seismic program and "to plan, develop and fund transportation and related projects"
- Amended in September 2011 to include development, operation and financing of express lane facilities

Recommendation: Revise board membership for express lane responsibilities. Both MTC and BATA must approve this change.

Current Membership		Proposed Membership	
1. MTC Chair	Tissier	1. MTC Chair	Worth
2. MTC Vice Chair	Worth	2. BATA Oversight Chair	Dodd
3. BATA Oversight Chair	Dodd	3. Alameda County	Haggerty
4. BATA Oversight Vice Chair	Bates	4. Contra Costa County	Glover
5. Programming & Allocations Chair	Glover	5. Solano County	Spering
6. Programming & Allocations Vice Chair	Kinsey	6. Business, Transportation & Housing Appointee (non-voting)	Sartipi

BAIFA and Express Lanes

- Responsibilities for development, operation and funding the Express Lane Network currently reside with MTC.
- **Recommendation: delegate to BAIFA these responsibilities:**
  - Protects MTC and regional transportation funds, in event of financial shortfalls associated with express lanes;
  - Provides BATA a seat at the table.
- This would be done through a cooperative agreement between MTC and BAIFA.

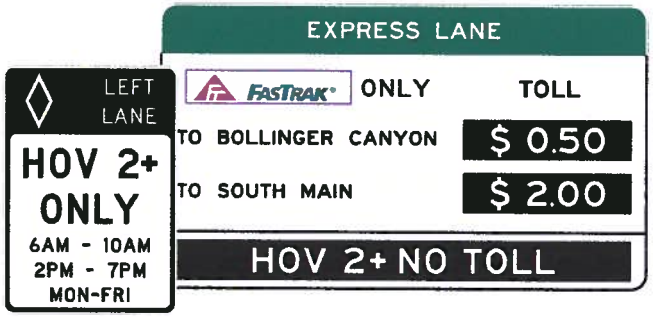
Policy Decisions and Responsibilities for BAIFA

Developing, Operating and Funding the Network

1. Approve phasing and financing plans
   - Which projects get built first;
   - How the network will be financed.

2. Design, procure, install and construct the express lanes and toll system

3. Adopt business rules, tolling and operating policies (See detail, slides 10-12)
   - Hours of operation (peak only, all day, weekends)
   - Toll rates and requirement for toll free travel (HOV2 or HOV3+)
   - Toll collection methods, violation procedures and penalties



4. Operate and maintain the express lanes and toll system (See detail, slide 13)

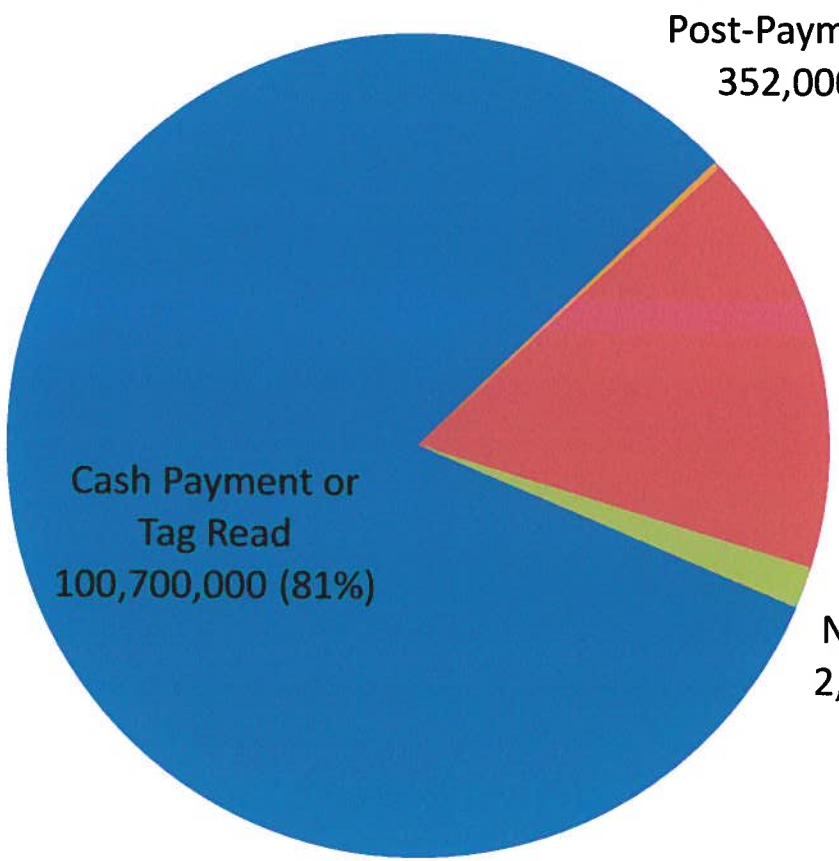
5. Take steps necessary to fund the project (See detail, slide 14)

Example BAIFA Policy Decision: Toll Violation System

- FasTrak® toll tags will be used for toll collection.
- Employ toll violation system, which is successfully in use on toll bridges:
  1. Toll violations will be automatically captured through license plate cameras.
  2. All vehicles, including carpools, will be required to carry a toll tag.
- Managing violations is critical for managing traffic, recovering the cost of operations, and for bond financing.

Toll Violations on BATA Bridges in FY 11-12

Total Bridge Trips: 123,667,000 (100%)

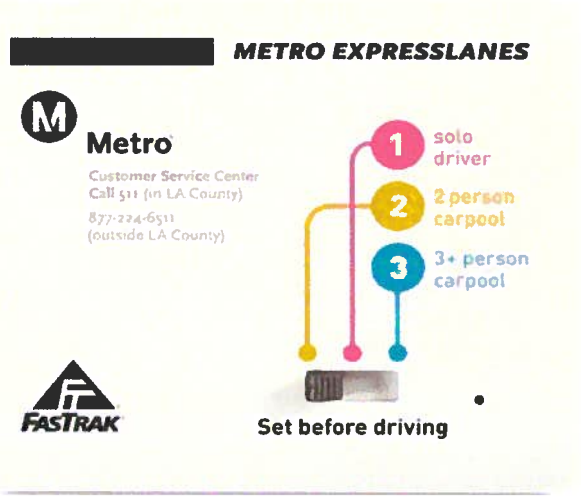


20% of all trips have no tag read or cash payment

With automatic toll violation system, the net violation rate is reduced to 2%

Example BAIFA Policy Decisions: Determining Toll Tag Technology

- Switchable toll tag
  - Drivers identify number of occupants using a switch on the toll tag
  - Toll readers detect the switch setting and apply the toll for non-HOVs; HOVs travel toll-free
  - Used in LA (I-10 and I-110) and Virginia (I-495 E-Zpass® Flex™)
  - Non-HOVs can use existing FasTrak® tags
- Large number of Bay Area carpoolers have FasTrak® already
  - 22,000 daily HOV trips on the BATA bridges (2012)



MTC EXPRESS LANE NETWORK

Policy Decisions and Responsibilities
Developing, Operating and Financing the Network

4. Operate and maintain the express lanes and toll system

BAIFA Responsibility	Fulfilled by*
Toll Tags/Customer Service	BATA (by law)
Toll System (O&M, TMC)	BAIFA, BATA, contractor, P3
HOV Enforcement	CHP (by law)
Roadway Maintenance	Caltrans, contractor, P3

**via cooperative agreement or contract*

Policy Decisions and Responsibilities
Developing, Operating and Financing the Network

5. Take steps necessary to fund the project
   - While not needed for the initial projects, bond financing will be needed to complete the Network.
   - BAIFA will need to secure authority to issue bonds for the Network.
   - The California Transportation Financing Authority (CTFA) Act is an attractive way to secure bonding and/or tolling authority - if timing and conditions for CTFA approval can be resolved.
   - Other legislative or judicial actions may be viable, such as validation action, in which BAIFA would take itself to court to confirm its authority to toll and finance the Network.

Milestones

	Governance	Program Delivery and Policy
Feb	☑ **Information item on BAIFA** 2/13 BATA Oversight & MTC Admin.	
Mar	❑ **Revise BAIFA Board** **3/6** BATA Oversight & MTC Admin. 3/27 BATA & MTC ❑ **Approve MTC-BAIFA coop** **3/6** MTC Admin. 3/27 MTC	❑ **Amend existing environ & program mgmt. contracts to continue work** 3/6 MTC Admin ❑ **Environmental Justice Considerations** 3/13 Policy Advisory Council
Apr	❑ **First BAIFA express lanes meeting** ❑ **Approve MTC-BAIFA coop** 4/24 BAIFA	❑ **Toll policy/business rules** 4/24 BAIFA
Spr/Sum 2013 (BAIFA)		❑ **Toll policy/business rules** ❑ **Authorize design contracts/ environmental contracts**