

# Memorandum

TAB 19

To: CHAIR AND COMMISSIONERS

CTC Meeting: March 16, 2016

From: WILL KEMPTON  
Executive Director



Subject: ADOPTION OF 2016 TOLL FACILITY GUIDELINES

## ISSUE:

Should the Commission adopt the attached 2016 Toll Facility Guidelines related to the approval of developing and operating new toll facilities in California as required in Assembly Bill 194 (Frazier, 2015)?

## RECOMMENDATION:

Staff recommends that the Commission adopt the 2016 Toll Facility Guidelines as proposed in Attachment A.

## BACKGROUND:

The Legislature passed and Governor Brown signed into law Chapter 687, statutes of 2015 (Assembly Bill or AB 194), delegating to the Commission the legislative responsibility to approve the tolling of transportation facilities in California. Before 2016, tolling authority was typically granted only through legislation specifically authorizing some entity to implement the tolled facility.

Specifically, Section 149.7 of the California Streets and Highways Code, as amended by AB 194, authorizes regional transportation agencies or the California Department of Transportation (Caltrans) to apply to the Commission to develop and operate high-occupancy toll lanes or other toll facilities, including the administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit or freight. Applications for the development and operation of toll facilities are subject to review and approval by the Commission pursuant to criteria set forth in guidelines established by the Commission.

Since presenting the Draft Toll Facility Guidelines at the Commission's January meeting, staff received comments from many interested parties. Commission staff considered these comments and incorporated them as appropriate into the final guidelines.

AB 194 did not include a timeline for specific updates to the required guidelines. Commission staff, however, recognize that the broad authority for toll facilities granted through AB 194 could

mean that these guidelines may need to be updated occasionally to take into account potentially unforeseen proposal types or other issues that may arise.

Attachment A – Final 2016 Toll Facility Guidelines

Attachment B – CTC Resolution G-16-10

Attachment C - Correspondence

**CALIFORNIA TRANSPORTATION COMMISSION**  
**Adoption of 2016 Toll Facility Guidelines**  
**March 16, 2016**

**RESOLUTION G-16-10**

- 1.1 WHEREAS the Legislature delegated to the Commission the legislative responsibility to approve the tolling of transportation facilities in California through the passage of Assembly Bill 194 (Chapter 687, statutes of 2015), and
- 1.2 WHEREAS the Legislature found and declared that the development, improvement, expansion, and maintenance of an efficient, safe, and well-maintained system of roads, highways, and other transportation facilities is essential to the economic well-being and high quality of life of the people of this state, and
- 1.3 WHEREAS the Legislature further found and declared that high-occupancy toll lanes, express lanes, and toll roads provide an opportunity to more effectively manage state highways in order to increase passenger throughput and to reduce delays for freight shipments and travelers, especially those traveling by carpool, vanpool, or bus, and
- 1.4 WHEREAS the Legislature further found and declared that highway tolling should be employed for the purpose of optimizing the performance of the transportation system on a transportation corridor and should not be employed strictly as a revenue generating facility, and
- 1.5 WHEREAS Section 149.7 of the Streets and Highways Code requires each application for the development and operation of the toll facilities described be subject to review and approval by the Commission pursuant to eligibility criteria set forth in guidelines established by the Commission, and
- 1.6 WHEREAS a draft of proposed guidelines was presented at the January 20, 2016 Commission meeting.
- 2.1 NOW THEREFORE BE IT RESOLVED that the Commission adopts the 2016 Toll Facility Guidelines, as presented by staff on March 16, 2016, and
- 2.2 BE IT FURTHER RESOLVED that the purpose of these guidelines is to identify the Commission's policy and expectations for the toll facility applications and thus to provide guidance to applicants, and
- 2.3 BE IT FURTHER RESOLVED that the Commission directs staff to post these guidelines on the Commission's website.

CALIFORNIA TRANSPORTATION COMMISSION  
Guidelines for  
Toll Facility Project Applications  
March 16, 2016

**Authority and Purpose**

The Legislature passed and Governor Brown signed into law Chapter 687, statutes of 2015 (Assembly Bill or AB 194), delegating to the California Transportation Commission (Commission) the legislative responsibility to approve the tolling of transportation facilities in California. Before 2016, tolling authority was typically granted only through legislation specifically authorizing some entity to implement the tolled facility.

Specifically, Section 149.7 of the California Streets and Highways Code, as amended by AB 194, authorizes regional transportation agencies or the California Department of Transportation (Caltrans) to apply to the Commission to develop and operate high-occupancy toll lanes or other toll facilities, including the administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit or freight. Applications for the development and operation of toll facilities are subject to review and approval by the Commission pursuant to criteria set forth in guidelines established by the Commission. Prior to approving an application, the Commission will conduct at least one public hearing at or near the proposed toll facility for the purpose of receiving public comment. Upon approval of an application, the regional transportation agencies or Caltrans may develop and operate the proposed toll facility, subject to the minimum requirements defined in statute.

The purpose of these guidelines is to set forth the Commission's policy for carrying out its role in implementing AB 194 and to assist the regional transportation agencies and Caltrans when contemplating an application to the Commission for approval to develop and operate high-occupancy toll lanes or other toll facilities. This Commission policy is not a regulation and should not be construed as imposing any requirement or imposing any deadline on any agency. References to timeframes in this guidance are statements of Commission intent and not deadlines or restrictions for either the Commission itself or for other agencies. Further, references to the contents of submittals from other agencies are statements of what the Commission expects that it will need in order to carry out its own responsibilities for project approval.

**Timing of Application**

No two projects seeking approval will be the same, therefore the Commission recognizes that the timing of application submission may vary. However, the Commission expects that the

## **Review and Approval of an Expenditure Plan**

According to AB 194, the revenue generated from the operation of a toll facility shall be available to the sponsoring agency in this order: (1) for direct expenses related to any debt issued to construct, repair, rehabilitate, or reconstruct the toll facility, (2) for the development, maintenance, repair, rehabilitation, improvement, reconstruction, administration, and operation of the toll facility, including toll collection and enforcement, and (3) reserves for the first two identified purposes. All remaining revenue generated by the toll facility shall be used in the corridor from which the revenue was generated pursuant to an expenditure plan developed by the sponsoring agency.

AB 194 requires the Commission to review and approve the expenditure plan and any updates for a toll facility sponsored by Caltrans. The Commission expects that, if possible, the expenditure plan for excess revenues from a toll facility sponsored by Caltrans will be submitted to the Commission in conjunction with submittal of a Caltrans application. If, however, Caltrans is unable to submit the expenditure plan at the time of application, the Commission expects the application to include a thorough discussion of Caltrans' framework and expectations related to the expenditure of excess revenues. Since AB 194 requires the Commission to approve the Caltrans expenditure plan before Caltrans can implement the project, Caltrans must submit the plan when ready and the Commission will consider approval of the proposed plan at the next regularly scheduled meeting.

For a toll facility sponsored by a regional transportation agency, the governing board of the regional transportation agency will review and approve the expenditure plan and any updates.

## **Evaluation of Project Eligibility**

Once a reimbursement contract is in place, the Commission will review and evaluate each application. The Commission may obtain professional opinions from necessary experts in the evaluation of the detailed application. For example, consultation and opinions could be obtained from expert engineers, accountants, and attorneys as applicable.

Project applications should include documentation to support the development and operation of high-occupancy toll lanes or other toll facilities, including the administration and operation of a value pricing program and exclusive or preferential lane facilities for public transit or freight.

The criteria set forth below will be considered by the Commission in determining whether the Commission should approve a toll facility project application submitted in accordance with AB 194. Applications that do not satisfactorily address the identified criteria will be considered incomplete and will not be recommended for approval.

## **Minimum Eligibility Criteria**

The Commission must find, at a minimum, that the criteria identified in AB 194 are met. Therefore, every application should clearly discuss how it meets the following minimum criteria:

## Corridor Improvement

AB 194 specified the Legislature's intent that highway tolling should be employed for the purpose of optimizing the performance of the transportation system on a transportation corridor and should not be employed strictly as a revenue generating facility. With that in mind, has the applicant provided compelling evidence that demonstrates that the proposed toll facility will significantly improve the corridor's performance?

## Technical Feasibility

*Project Definition* – Has the applicant described the proposed facility in sufficient detail to determine the type and size of the project, the location, all proposed interconnections with other transportation facilities, the communities that may be affected, and alternatives (e.g. alignments) that may need to be evaluated?

*Proposed Project Timeline* – Is the time frame for project completion clearly outlined? Is the proposed schedule reasonable given the scope and complexity of the project? Does the proposal contain adequate assurances that the project will be completed on time?

*Operation* – Has the applicant presented a reasonable statement setting forth plans for operation of the facility?

*Federal Involvement* – Is the project outside the purview of federal oversight, or will it require some level of federal involvement due to its location on the National Highway System or Federal Interstate System or because federal permits are required? If so, has the applicant provided a reasonable plan for addressing all federal responsibilities?

*Maintenance* – Is there a process in place to clearly define assumptions and responsibilities during the operational phase including law enforcement, toll collection, and maintenance?

## Financial Feasibility

*Funding Plan* – Is the funding plan built on a reasonable basis for funding project development and operations? For example, are the assumptions on which the plan is based well defined and reasonable in nature? Are the plan's risk factors identified and dealt with sufficiently? Are the planned sources of funding and financing realistic? Has the applicant demonstrated evidence of its ability to obtain the necessary financing? Does the applicant have the ability to fund shortfalls if revenues do not meet projections?

*Expenditure Plan for Excess Revenues* – If an expenditure plan for excess revenues has not yet been adopted by the appropriate governing entity, has the applicant included a discussion of its intentions for revenues collected beyond those necessary for any debt service, operations, and reserved as defined in AB 194?

(D) If construction is complete and operations have begun, a discussion of the operations of the facility and how actual performance compares to the project's original expected performance.

(E) A discussion of any other issues identified and actions taken to address those issues.

### **Projects Requiring Future Commission Actions**

Section 149.7 does not modify nor does this guidance address the Commission's authority to program and allocate state funds. No application approval in accordance with AB 194 or these guidelines can be considered as binding the Commission to take any programming or allocating action in the future in relation to any application.

Specifically, the Commission's approval of a toll facility project application does not in and of itself create a new commitment of state transportation revenues or create an undue risk to state transportation revenues committed to other projects.

### **Project Changes after Approval**

After the Commission has approved a project, it will have no further role in reviewing or approving changes to the project except at the request of the sponsor agency. If Caltrans or the regional transportation agency finds it necessary or appropriate to make changes to the toll facility project after approval, the Commission expects that the agency will request approval of the change by submitting a supplement to the project application setting forth a description of the change and the reasons for it. A change approval request is only necessary if the change substantially alters the scope, schedule, or terms of the approved project. The Commission will approve the change if it finds that the revised project meets the evaluation criteria set forth in this guidance.

