




December 2, 2024

To: Executive Committee

From: Darrell E. Johnson, Chief Executive Officer 

Subject: Principles for 405 Express Lanes Excess Toll Revenue Policy and Expenditure Plan

Overview

Under state law, the Orange County Transportation Authority can use future 405 Express Lanes excess toll revenues for maintenance and improvements to the Interstate 405 corridor. At the October 14, 2024, Board of Directors meeting, following a review of the agreements and statutory requirements associated with the development of the future 405 Express Lanes Excess Toll Revenue Expenditure Plan, the Board of Directors directed staff to develop principles to help guide the use of excess toll revenues and the preparation of the expenditure plan. These principles are presented for Board of Directors' review and approval.

Recommendations

- A. Approve the principles for developing the 405 Express Lanes Excess Toll Revenue Policy and the future 405 Express Lanes Excess Toll Revenue Expenditure Plan.
- B. Direct staff to return with a draft 405 Express Lanes Excess Toll Revenue Policy in 2025.

Background

The Orange County Transportation Authority (OCTA), in cooperation with the California Department of Transportation (Caltrans) and the cities of Costa Mesa, Fountain Valley, Huntington Beach, Seal Beach, and Westminster, implemented the Interstate 405 (I-405) Improvement Project between State Route 73 (SR-73) and Interstate 605 (I-605) (Project). The Project added one general purpose lane in each direction from Euclid Street to I-605, consistent with Measure M2 (M2) Project K, and added an additional lane in each direction that combines with the existing high-occupancy vehicle (HOV) lane to provide dual express lanes in each direction of I-405 from SR-73 to I-605, otherwise known as the 405 Express Lanes. The 405 Express Lanes commenced operations on December 1, 2023.

The OCTA Board of Directors (Board) approved the 405 Express Lanes Toll Policy in 2016 and updated the policy in July 2023, concurrent with setting opening toll rates. The 405 Express Lanes Toll Policy focuses on facility safety and performance and includes the following goals:

- Provide express lanes customers with a safe, reliable, congestion-free commute
- Optimize throughput at free-flow speeds
- Increase average vehicle occupancy
- Balance capacity and demand to serve customers who pay tolls as well as people who rideshare or use transit
- Generate sufficient revenue to sustain the financial viability of the 405 Express Lanes
- Ensure all covenants in the financing documents are met
- Ensure any potential net excess toll revenues are used for I-405 corridor improvements (after debt service, debt service coverage ratios, and reserves are met and as allowable by statute)

The 405 Express Lanes are operated and maintained by OCTA based on a toll operating and lease agreement (operating agreement) executed with Caltrans in March 2017. The operating agreement is for a 40-year lease term which began on December 1, 2023, and will end on December 1, 2063.

The operating agreement includes provisions for the future use of surplus or excess toll revenues. Based on the operating agreement, excess toll revenues are defined as revenues beyond the expenditure needs for the 405 Express Lanes operation and maintenance, debt repayment costs, enforcement, repair and rehabilitation, reserves, and administration. Access to excess toll revenues is subject to the creation of an expenditure plan, developed in partnership with Caltrans and approved by the Board. The expenditure plan must be in place for five years before the availability of excess toll revenues. Based on recent informal projections, there is the possibility that excess toll revenues could be available as early as 2029. However, following the first full year of operations and when OCTA has updated the cashflows with a new traffic and revenue study, OCTA will also update the forecast on when excess revenues are likely to be available.

Additionally, in 2017, OCTA signed a Transportation Infrastructure Finance and Innovation Act (TIFIA) loan agreement with the federal government, which stipulated that for the first five years after startup, any excess toll revenues would be held in a distribution lock-up fund at a trustee bank. After this period, assuming compliance with loan terms, 50 percent of the accumulated excess toll revenues and future revenues must go towards repaying the TIFIA loan, with the remainder available for OCTA's use. Once the loan is fully repaid, OCTA can

utilize all excess toll revenues until the end of tolling authority on December 1, 2063.

On October 14, 2024, the Board directed staff to develop principles and policies for a 405 Express Lanes Excess Toll Revenue Expenditure Plan. This report thus focuses on foundational principles for the use of excess toll revenues and the development of the future expenditure plan. On November 4, 2024, the OCTA Executive Committee reviewed the recommended principles and directed staff to return the item to a future Executive Committee with redlined changes to address the discussion by the Executive Committee. Staff has revised two of the principles for Executive Committee and Board consideration.

Discussion

In addition to considering the requirements noted above and presented to the Board in October, staff has reviewed excess revenue policies and framework from other regions as well as the Policy for the Use of Excess 91 Express Lanes Toll Revenue to develop a framework for the 405 Express Lanes Excess Toll Revenue Policy. The development of the guiding principles considered Orange County customer needs, congestion relief, and overall safety. The principles allow for Board flexibility in the future and align with the 405 Express Lanes Toll Policy of improving facility throughput and the positive transportation experience of all users.

The proposed framework enables OCTA to implement its vision of an integrated, balanced transportation system that supports the diverse travel needs and reflects the character of Orange County while also working toward the OCTA mission to develop and deliver transportation solutions to enhance the quality of life and keep Orange County moving. These principles are captured in the project selection, planning and equity, fiscal management, and good governance categories and are described below. The recommended principles will lead to more specific policies which will be considered by the Board in summer 2025 and ultimately an expenditure plan which will be considered by the Board in late 2025. A summary of the principles within each category is provided below and details can be found in Attachment A, which is a redlined version from the first Executive Committee review and Attachment B is a clean version of the recommended principles.

Project Selection:

There are four recommended principles that focus on project selection. The principles all consider the overarching goal for the 405 Express Lanes which is to improve the transportation experience by improving throughput, increasing reliability, and decreasing travel delays through the I-405 corridor. Project selection will focus on improvements within the I-405 corridor, consistent with

state law, which may include future transit projects that help relieve pressure on the system and those that improve the function of the express lanes in terms of the customer experience and lower operating costs. The principle that supports transit as a means of decreasing congestion in the I-405 corridor was discussed at the November 4, 2024 Executive Committee. Principle No. 4, regarding public transportation options was changed to acknowledge the value of congestion relief efforts through enhanced public transportation services. The change to this principle is in the redlined version of the principles provided in Attachment A. Ultimately, any projects that are included in a future 405 Express Lanes excess toll revenue expenditure plan would be selected and approved by the OCTA Board.

Planning and Equity

There are three principles under planning and equity that direct OCTA to rely on various OCTA transportation planning documents that have undergone comprehensive analyses and public outreach. Further, good transportation policies and decision-making recognize the value of public and stakeholder input. Public input can lead to better decisions that are more sustainable, supportable, and implementable. Finally, there is a principle that would consider a policy or improvements that would support equity or equitable use within the I-405 corridor.

How the equity principle might be considered in terms of tolling policies was also discussed in November by the Executive Committee. Including a principle that considers equity is a standard feature when developing many kinds of plans and policies. At this point, it is unclear how equity may be a factor in future policies on expenditure of excess toll revenues, but it is recommended that future policy development provide for equity considerations. The change to this principle is listed as No. 7 in the redlined version provided in Attachment A.

Fiscal Management

There are two recommended principles under fiscal management. The first is that generally, projects should be delivered through pay-as-you-go financing as the preferred method of project delivery. The second principle, however, would allow the use of bonding when that option supports more beneficial outcomes.

Good Governance

A primary objective for using 405 Express Lanes excess toll revenues is to enhance funding sources and enable unfunded projects to advance, contributing positively to the transportation system. Reducing existing state and federal funds due to availability of excess toll revenues could lead to no net gain in meeting the transportation needs of Orange County residents and workers and should be

avoided. Consistent with Section 10 Excess Toll Revenue, paragraph 10.1.d in the operating agreement, the State is held to a “maintenance of effort” commitment for Orange County to ensure that the use of net excess toll revenue to fund projects does not result in reducing State Highway Operation and Protection Program (SHOPP) funds available for use in Orange County.

Similarly, OCTA always works to maximize external state and federal funding for transportation needs in Orange County and is recommending a principle that excess toll revenue supplement external fund sources instead of supplanting them.

Staff requests approval of the 11 proposed principles listed in Attachments A and B as a starting place to develop the 405 Express Lanes Excess Toll Revenue Policy.

Next Steps

Moving forward, staff will use the approved principles to develop a draft policy for the use of excess toll revenues for Board consideration. The tentative schedule for the overall process would include: (1) principles for use of excess toll revenues (December 2024), (2) draft 405 Express Lanes Excess Toll Revenue Policy (summer 2025), and (3) 405 Express Lanes Excess Toll Revenue Expenditure Plan (late 2025). Consistent with AB 194 (Chapter 687, Statutes of 2015) and operating agreement requirements, the expenditure plan will be prepared in partnership with Caltrans.

Summary

Key principles are proposed for approval to help guide the use of excess toll revenues and preparation of the 405 Express Lanes Excess Toll Revenue Expenditure Plan. With Board approval, the framework developed will be used to guide the development of the Draft 405 Express Lanes Excess Toll Revenue Policy, which will be presented to the Board in summer 2025, followed by the 405 Express Lanes Excess Toll Revenue Expenditure Plan, which will be brought to the Board in late 2025.

Attachments

- A. Principles for 405 Express Lanes Excess Toll Revenue Redline Version
- B. Principles for 405 Express Lanes Excess Toll Revenue Clean Version

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