




November 4, 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 is 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.

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.

Project Selection:

1. Projects that improve customer experience, relieve congestion, and enhance the safety of the I-405 facility will be prioritized.

There has been some concern over the years that the primary purpose of a toll facility is to generate revenue. However, the goal for the 405 Express Lanes is to improve the transportation experience by improving throughput, increasing reliability and decreasing travel delays through the corridor. Establishing a principle that clearly focuses on the system's function over revenue generation is critical. This principle would apply to projects that would be considered for future 405 Express Lanes excess toll revenue. Any project being proposed for funding would need to demonstrate that it addresses customer needs, provides congestion relief, and considers the safety of the corridor.

2. Improvements that enhance customer satisfaction and lower operating costs through improved toll lane technology or other enhancements.

New technologies are under development that can improve operations and accessibility and make the use of a toll facility simpler for the user. Excess toll revenues may be used to make improvements to the toll facility to ensure the best user experience at the least cost. Toll collection is among the many industries embracing advanced technology, and the future holds promising ways to simplify toll collection for many drivers.

3. Transportation investments within the I-405 corridor in Orange County at the discretion of the Board and consistent with state and federal law.

AB 194 (Chapter 687, Statutes of 2015) mandates that excess revenues generated within a toll facility corridor must be used in the same corridor according to an approved expenditure plan. However, the term "corridor" has not been precisely defined, giving the Board the flexibility to determine beneficial projects. A prudent approach would be to ensure a relationship between the use of the excess revenues from the 405 Express Lanes tolls and the benefit to I-405 corridor travelers, using accepted transportation analysis tools. Under this approach, the Board would decide how to prioritize investments of excess toll revenue in the vicinity of the I-405 freeway with input from Caltrans.

4. Public transportation services that reduce traffic congestion within the I-405 corridor within Orange County.

Public transit investment has wide-ranging economic benefits, not only for those who ride it, but also for those who may need to drive. By giving some commuters an alternative to driving and leveraging transit, OCTA would increase the overall public benefit of the 405 Express Lanes excess toll revenues.

Planning and Equity

5. Use of OCTA-developed multimodal plans as a basis for project selection.

OCTA continually develops various transportation plans that have undergone comprehensive analyses and public outreach. These plans include various multimodal projects, many of which are unfunded. The OCTA Long-Range Transportation Plan encapsulates these projects. Using these multimodal plans as a foundation for identifying projects within the I-405 corridor is a practical starting point for developing a sound expenditure plan, alongside specific evaluation criteria for project prioritization. These plans include transit and active transportation improvements that will benefit all communities and consider sustainability.

6. Consideration of additional or focused stakeholder input and community outreach and engagement.

Good transportation policies and decision-making must recognize the value of input from essential workers, residents, and frequent facility users. Public input is important to public investment decisions because it can lead to better decisions that are more sustainable, supportable, and implementable. Also, there may be opportunities for outreach to new users through promotions and community engagement.

7. Develop policies and programs to support equity in tolling.

This principle will endeavor to reduce the implications of roadway pricing, which is inherently a demand management strategy, on low-income commuters using the 405 Express Lanes corridor in support of equity in tolling. These considerations will ensure compliance with requirements in state and federal statutes regarding toll payment options, customer service and accessibility.

Fiscal Management

8. Pay-as-you-go financing as the preferred method of funding the improvements.

Considering interest costs, using surplus toll revenues directly for projects should be the preferred approach to funding of projects.

9. Bond financing may be considered as an alternative to “pay as you go” if it supports more beneficial outcomes.

OCTA may consider bond financing if the scale and timing of planned expenditures make immediate funding unviable. Any new financing should not affect the approved toll policy, the TIFIA loan agreement, or OCTA’s financial commitments related to the 405 Express Lanes.

Good Governance

10. Use of 405 Express Lanes excess toll revenues on the state highway system shall be subject to a “maintenance of effort” commitment by the State.

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.

11. Expenditures should supplement, not supplant, state and federal revenues.

OCTA always works to maximize external state and federal funding for transportation needs in Orange County. This concept is included here in the policy framework. It is not meant to prevent OCTA from using these funds if state and federal revenues become unavailable, outside of OCTA’s control.

Staff requests approval of the ten proposed principles listed in this report 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 (November 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 the AB 194 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/fall 2025, followed by the 405 Express Lanes Excess Toll Revenue Expenditure Plan, which will be brought to the Board in late 2025.

Attachment

None.

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