



U.S. Department
of Transportation
**Federal Highway
Administration**

Office of the Administrator

1200 New Jersey Avenue, SE.
Washington, DC 20590

July 31, 2008

In Reply Refer To:
HOA-3

Ms. Barbara Lewis
Chief, Office of Innovative Finance,
Division of Budgets
California Department of Transportation
Sacramento, CA 94273-0001

Dear Ms. Lewis:

The Federal Highway Administration (FHWA) has completed its review of the California Department of Transportation's (Caltrans) Special Experimental Project No. 15 (SEP-15) Application to deviate from the definition of Transportation Infrastructure Finance and Innovation Act (TIFIA) "eligible project costs." The FHWA will allow TIFIA loan proceeds to be used to pay a portion of the purchase price of the acquisition of the San Joaquin Hills Toll Road, the Foothill Toll Road, and the Eastern Toll Road (collectively, the System or the Project) by the Transportation Corridor System (TCS) and defease all of the outstanding indebtedness of the San Joaquin Hills Transportation Corridor Agency (SJHTCA) and the Foothill/Eastern Transportation Corridor Agency (FETCA) incurred in connection with the acquisition, construction and refinancing of the System.

Based on the comments provided by our California Division Office, the TIFIA Joint Program Office and other Headquarters offices, the SEP-15 Steering Committee recommended, and I concur, that the Application be accepted for administration under SEP-15. The FHWA's response to the proposed experimental feature for the System is discussed below.

The FHWA's acceptance of your Application for administration under the SEP-15 Program does not constitute approval of the Project for TIFIA credit assistance, which assistance is subject in all respects to complying with TIFIA requirements and terms and conditions acceptable to the U.S. Department of Transportation (DOT) before a commitment of funds can be made. Further, the acceptance of the Project for administration under SEP-15 does not waive any other Federal requirement applicable to the Project. Because of the amount of System debt to be refinanced and projected TIFIA demands for "greenfield" project financings, FHWA's acceptance of the TCS application under SEP-15 should not be interpreted as an indication that DOT will agree to the refinancing of System debt.

Assuming your TIFIA application receives a positive response, our next major action would be to work with you to draft an Early Development Agreement (EDA) for the Project. The EDA will contain parameters to guide the implementation of the experiment and the performance measures that will be used to evaluate the success of the TIFIA experimental feature.

MOVING THE
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Background

The TCS, a joint powers agency whose members are the SJHTCA and the FETCA, is contemplating the acquisition of the rights to operate, manage and collect tolls on the System. In addition, the TCS would either be obligated to construct future improvements to the System or to provide financial support for the construction of the improvements, which will become part of the System once construction is complete. The TCS, SJHTCA and FETCA are in the process of negotiating the acquisition and assignment of agreements for the System. The rights and responsibilities of SJHTCA and FETCA pursuant to Caltrans Cooperative Agreements, which transfer ownership and maintenance responsibility for System components to Caltrans upon substantial completion, would also be assigned to TCS.

The SJHTCA and FETCA are joint exercise of powers agencies (JPA) organized under the provisions of the laws of the State of California (Chapter 5, Division 7, Title 1 of the Government Code of the State). SJHTCA and FETCA were formed for the purpose of planning and constructing the San Joaquin Hills Toll Road and the Foothill/Eastern System, respectively, and are entitled to set and collect tolls from users of the respective toll roads. The TCS is a JPA organized under the laws of the State and a Joint Exercise of Powers Agreement Creating the Exploratory Joint Powers Agency. The Exploratory Joint Powers Agency, created in April 2003, was renamed the Transportation Corridor System in September 2003.

The TCS is a separate legal entity distinct from its members, SJHTCA and FETCA, though TCS, SJHTCA and FETCA are supported by the same staff. The TCS Governing Board is composed of representatives of the member entities of the organizing agencies, including the county of Orange and 19 cities. Following issuance of toll road revenue bonds, execution of the TIFIA loan and the transfer of substantially all of the assets and liabilities associated with the System to TCS, the remaining responsibilities of SJHTCA and FETCA will be to administer the Development Impact Fee Program and to prosecute existing litigation. FETCA will also continue to act as "lead agency" for purposes of the California Environmental Quality Act and the National Environmental Policy Act with respect to the development of the 14-mile Foothill South Corridor, which completes the Foothill corridor.

The System includes the first public toll roads in California, and enabled construction of much-needed highways for which there were no public funds at the time. The San Joaquin Hills Toll Road is a limited access, 6-lane toll highway stretching approximately 15 miles from Interstate Route 405 in the vicinity of John Wayne Orange County Airport in Santa Ana, California, south to a connection with Interstate 5 in San Juan Capistrano, California. The Foothill/Eastern System consists of the Eastern Transportation Corridor (State Routes 241, 261 and 133) and the Foothill Transportation Corridor (State Route 241). The Eastern Transportation Corridor is a limited access 24-mile, 4 to 6-lane toll road. Currently, the Foothill Transportation Corridor consists of the completed and operating 12.1 mile northern segment, known as "Foothill-North." Foothill-North is a limited access four to six-lane toll road. The economic viability of the continued operation of the System and its expansion through construction of the future improvements will be enhanced with consolidation and restructuring of the assets and liabilities of SJHTCA and FETCA, which will occur as part of their acquisition by TCS.

The TCS and Caltrans acknowledge the potential need for certain near-term improvements to the System, including, but not limited to, HOV lanes, rail transit improvements and other transit improvements, and agree to cooperate with each other in planning, constructing, maintaining and operating such additional improvements.

The FHWA concurs with Caltrans that the proposed TIFIA experiment will serve several goals including: (1) maximizing financial capacity; (2) expediting project delivery; (3) enabling timely construction of the near-term improvements; and (4) more effectively leveraging private investment in transportation improvements. The proposed experiment would provide valuable information to DOT as it evaluates changes to the TIFIA program to accommodate non-traditional project financing schemes.

Experimental Feature

The Caltrans seeks to deviate from the definition of TIFIA “eligible project costs” to include the costs of refunding long-term project debt. The Caltrans proposes that FHWA consider the definition of “eligible project costs” to include the TCS’s total cost of consolidating and restructuring the assets and liabilities of SJHTCA and FETCA. The acquisition price is comparable to the total costs expended to acquire and improve the System.

Purpose: The maximum size of the TIFIA loan will be determined with reference to TCS’ acquisition or refinancing cost for the System, but is unlikely to be greater than the cost of new investment in the System. The TIFIA assistance will increase the financial capacity of the TCS to build the improvements to the System.

Deviation from FHWA Requirement(s): By statute and regulation, the total amount of TIFIA credit assistance is limited to 33 percent of “eligible project costs” which is defined as developmental activities, construction expenses, and related financing costs. 23 U.S.C. § 602(a)(3); 49 C.F.R. § 80.5. Traditionally, these costs have been associated with the investments required to deliver new infrastructure. In the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-59, Aug. 10, 2005), Congress gave the Secretary the discretionary authority to allow TIFIA to assist with refinancing long-term debt but it did not address how to determine the maximum amount of TIFIA credit assistance that may be provided when the Secretary approves the use of the refinancing provision.

FHWA Response: The FHWA accepts this experimental feature for administration under SEP-15 with the understanding that the TIFIA loan application will provide more detailed information on the near-term improvements to the System, including the status of its environmental review. In accepting the experimental feature, it is understood that DOT will adhere to the same credit standards applied to any project seeking TIFIA assistance.

Proposed Performance Measures and Reports

Caltrans proposes to evaluate and report on the experimental feature of the TIFIA deviation. The main points of focus for the evaluation will be financial justification for TIFIA loan size, maximization of capital, innovation in financing, and time-savings. The proposed performance measures and report described in the Caltrans application will be reviewed during the development of the EDA and incorporated into a project timeline.

I have asked Ms. Margo Sheridan, FHWA's Acting Chief Financial Officer, and Mr. Gene Fong, Division Administrator for the FHWA California Division Office, to serve as the co-facilitators for the SEP-15 for the Project. Ms. Sheridan and Mr. Fong will establish an FHWA interdisciplinary team to work with Caltrans to develop the provisions of the EDA. They will also assist you in fulfilling the Federal requirements for proposed improvements to the System.

Sincerely,



James D. Ray
Acting Administrator