STATE ROUTE (SR) 37 POLICY COMMITTEE

****REVISED****

9:30 a.m., Thursday, September 1, 2016
Sonoma Raceway, Driver's Lounge
29355 Arnold Drive
Sonoma, CA 95476

****REVISED****

MEETING AGENDA

1. **CALL TO ORDER AND INTRODUCTIONS** — **Vice Chair, Supervisor David Rabbitt, County of Sonoma**

2. **OPPORTUNITY FOR PUBLIC COMMENT**

3. **CONSENT CALENDAR**

   A. **Minutes of the July 7, 2016 SR 37 Policy Committee Meeting** — **Janet Adams, STA**
   Recommendation:
   Approve SR 37 Policy Committee July 7, 2016 Meeting Minutes
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4. **INFORMATION ITEMS**

   A. **SR 37 Rail Options –** Discuss existing conditions, potential opportunities and challenges of planning rail service on the SR 37 corridor. — **David McCrossan, KKCS**

   B. **Project Finance Advisory Ltd. (PFAL) Transportation Financing Case Studies -** Introduction to finance options and presentation of the following case studies: — **Jose Luis Moscovich, PFAL; Victoria Taylor, PFAL; Richard Kerrigan, PFAL**
      1. South Bay Expressway- **Pg. 9**
      2. US 36 Managed Lanes- **Pg. 17**

   C. **SR 37 Policy Committee Discussion of Public Policy** — **Daryl Halls, STA**
   Follow up discussion on the twenty-five policy questions presented to the SR 37 Policy Committee at their July 7th meeting. This is a first in a series of focused policy discussions planned for future SR 37 Policy Committee meetings. The categories for this policy discussion include:
      1. SR 37 Corridor Policy Committee Role and Responsibilities
      2. Public Process

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SR 37 Policy Committee Members:

Solano Elected Officials	Sonoma Elected Officials	Marin Elected Officials	Napa Elected Officials
Chair Person Osby Davis, Mayor City of Vallejo Jim Spering, MTC Commissioner Erin Hannigan, Solano County Board of Supervisor	Vice- Chair David Rabbitt, Sonoma County Board of Supervisor Jake Mackenzie, MTC Commissioner Susan Gorin, Sonoma County Board of Supervisor	Steve Kinsey, MTC Commissioner Judy Arnold, Marin County Board of Supervisor Stephanie Moulton-Peters, Councilmember, City of Mill Valley	Mark Luce, MTC Commissioner Keith Caldwell, Napa County Board of Supervisor Leon Garcia, Mayor City of American Canyon

Note: The SR 37 Policy Committee meetings are generally held at 9:30 a.m. on the 1st Thursday of every odd month at a location TBD.

D. Public Outreach Update — **Suzanne Smith, SCTA**

As requested at the July 7th SR 37 Policy Committee, staff developed a summary of past, current and future public outreach strategies.
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E. United Bridge Partners (UBP) Response to SR 37 Policy Committee Questions — **Ed Diffendal, UBP; Linda Figg, UBP**

The SR 37 Policy Committee submitted questions to UBP in response to their unsolicited proposal for SR 37 at their May 5, 2016 meeting. UBP is scheduled to provide an overview of their response to the Policy Committee questions at the September 1st meeting.
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4. ACTION ITEMS: NONE

5. COMMITTEE COMMENTS AND STAFF UPDATES — **Group Discussion**

6. FUTURE TOPICS:

A. PFAL Case Studies
- **South Norfolk Jordan Bridge**
- **George Bush Turnpike Western Extension**
- **Presidio Parkway**

B. Status update on Caltrans SR 37 Letters

7. ADJOURNMENT

Next SR 37 Policy Committee Meeting: 9:30 , Thurs., November 3, 2016
Farragut Student Union Ballroom - Touro University California
1750 Club Drive, Mare Island, Vallejo

Draft State Route (SR) 37 Policy Committee Meeting Minutes
9:30 a.m., Thursday, July 7, 2016
Farragut Student Union Ballroom
Touro University California
1750 Club Drive, Mare Island
Vallejo, CA 94592

MEETING MINUTES

1. **Call to Order/Introductions:**
Committee Chairperson, Mayor Osby Davis, called the SR 37 Policy Committee Meeting to Order at approximately 9:35 a.m.

POLICY COMMITTEE MEMBERS PRESENT:	Osby Davis, Chairperson	Mayor, City of Vallejo
	David Rabbit, Vice Chair	Sonoma County Board Supervisor
	Judy Arnold	Marin County Board Supervisor
	Keith Caldwell	Napa County Board Supervisor
	Leon Garcia	Mayor, City of American Canyon
	Susan Gorin	Sonoma County Board Supervisor (arrived at 10:15 am)
	Erin Hannigan	Solano County Board Supervisor
	Jim Spering	MTC Commissioner, Solano County Board Supervisor
	Steve Kinsey	MTC Commissioner, Marin County Board Supervisor
	Mark Luce	MTC Commissioner, Napa County Board Supervisor
	Jake Mackenzie	MTC Commissioner, City Council, Rohnert Park
	Elizabeth Patterson	Mayor, City of Benicia (Alternate Member)
EXECUTIVE DIRECTORS PRESENT:	Daryl Halls	STA
	Kate Miller	NVTA
	Dianne Steinhauser	TAM
	Suzanne Smith	SCTA (arrived at 10:25 am)
OTHERS PRESENT:	Anthony Adams	STA
	Janet Adams	STA
	Steve Birdleboleh	Sonoma County Transportation and Land Use
	Adam Brand	Sonoma County Counsel
	Chadi Chazbek	HNTB
	Rick Coates	Friends of SMART
	David Coleman	Assembly Member Dodd
	Mike Davis	ICF International

Theodore Deutz	United Bridge Partners
Ed Diffendal	United Bridge Partners
Barry Eberling	Napa Valley Register
Pat Eklund	Mayor, City of Novato
Dick Fahey	Caltrans, District 4
Linda Figg	Figg Bridge
Chuck Finnie	BMWL and Partners
Gary Giacomini	United Bridge Partners
Molly Graham	TAM
Robert Guerrero	STA
John Kenyon	Parsons
Jerry Meril	National Heritage Institute
Linda Meckel	SMART
Peter Miljanich	Solano County Counsel
Jim Morrison	Traffic Technologies
Mel Orpilla	Congressman Thompson
Judy Page	Sonoma
Steve Page	Sonoma Raceway
Isaac Pearlman	BCDC
Logan Pitts	Assembly Member Dodd
Danielle Schmitz	NVTA
Toshi Shepard-Ohta	MTC
Susan Stompe	Marin Conservation League
Russ Thompson	City of Novato
Hutch Turner	Novato Exposed
Phil Vermeulen	United Bridge Partners
Eric Whan	City of Napa
David Oster	
Rick Fraites	
Shell Leader	

2. <u>Opportunity for Public Comment:</u>

Gerry Meril thanked the Policy Committee and staff for their dilegence in consideration of the UBP Proposal as shown in the thoughtful questions that have been prepared. He would encourage the Policy Committee to continue to move forward in seeking solutions for the corridor.

Steve Bridleboleh commented that the proposed improvments would add 100% increase in capacity whereas the Region only has 4% increase allowed for added VMT. Therefore, he asked the Policy Committee to consider how these improvments fit into the Region and Statewide Transporation Plans.

3. <u>Approval of the May 5, 2016 Meeting Minutes</u>

On a motion by Marin Supervisor Steve Kinsey and a second by Solano Supervisor Jim Spering, the SR 37 Policy Committee approved the May 5, 2016 meeting minutes.

4. **Information Items:**

   A. **SR 37 Corridor Financial Opportunities Analysis Consultant Introduction**
   Richard Kerrigan and Victoria Taylor of PFAL provided and overview of their company, its qualifications and work experience as it relates to major project financing. Additionally, they provided an overview of the scope of work for the SR 37 analysis they are now under contract. Their draft analysis expected to be completed in January 2017.

   Committee/Public Comments:
   Committee Member Spering stated that he didn't want the UBP proposal to be set aside while the Policy Committee waited for this consultant work to be completed in January.

   Committee Member Kinsey asked if the entire corridor will be reviewed by PFAL. Richard, PFAL, indicated that yes, they will look at the financing options for the entire corridor.

   Committee Alternate Member Patterson asked if PFAL can begin identifying immediate projects or low hanging fruit type project. Daryl Halls responded that a future Project Initiation Document will address this.

   Committee Member Caldwell inquired if the PFAL report will layout the next steps and provide direction for options. Richard, PFAL, will consider a range of financial ability of the corridor and consideration of risks.

   Committee Member Luce inquired about the risk of not being successful. He wants the report to recognize risks of not being able to complete elements of the work. Victoria, PFAL, stated that they will complete a Tool Box that will state risks along the way to implement a project through the various options that exist.

   Public comment from Pat Eklund, Mayor, City of Novato asked what the public engagement process will be. Specifically, she wanted this engagement if the facility is envisioned to be tolled. She commented that a RFP should be issued to see if a better proposal exists. Further, she would like PFAL to look at options that include no tolling.

5. **Action Item:**

   A. **United Bridge Partners (UBP) Unsolicited Proposal Response Letter**
   Janet Adams provided an overview of the estimated 63 questions that staff from all four counties, legal and PFAL colaberated on. The questions are grouped by related catergories, such as legal, schedule, financial, environmental, etc.

   Daryl Halls provided an overview of policy questions that staff has raised during this review process that will be brought back to the Policy Committee for discussion. Daryl stated that there are approximately 24 questions that are grouped into two areas; Proposal Evaluation and General Policy.

   Committee/Public Comments:
   Committee Member Kinsey asked if there is an ability to include additional utilities such as broadband or solar power generation infrastructure as part of the proposed project with the thought being this effort provdes an oppertunity to manage a wide range of resources throughout this corridor.

Committee Member Luce asked to include a question to UBP seeking for them to compensate for the extensive staff time that will be needed to oversee the approval process.

Committee Member Spering asked if mitigation was for the UBP proposal to Segment B from impacts to Segments A and C. He further asked how would Segments A and C be built in the future.

Altenative Committee Member Patterson suggested that the Policy Committee needs to have a comprehensive system approach that will look at the corridor similar to a Master Plan as the starting point. Then work through the low hanging fruit on corridor improvments to identify near term, mid term and long term work that is needed on the coridor.

Committee Member Davis asked which side of Hwy 37 the project would start on, the east or west side of Mare Island. He stated that he believes the Mare Island Interchange needs to be included in UPB's Proposal. Additionally, Davis asked that the group would look at the UBP proposal in conjunction with pasenger rail along the corridor. Daryl Halls responded yes, we will plan to address this and have planned to have the topic of passenger rail presented at the next Policy Commtttee Meeting.

Recommendation:
Approve the following:

1. Authorize the SR 37 Executive Steering Committee to submit questions for United Bridge Partner's unsolicited proposal as included in Attachment B ***as amended to include additional questions posed by Committee Members at the Meeting***; and
2. Authorize the SR 37 Executive Steering Committee to forward the United Bridge Partner's unsolicited proposal to Caltrans for their review and comment.

On a motion by Committee Member Kensy and a second by Committee Member Rabbit, the Policy Committee approved the recommendation as amended shown above in ***bold italics***.

B. SR 37 Project Initiation Document (PID) Funding Request:

Daryl Halls presented this item and noted the request was for $2 million from MTC for a Project Initiation Document for SR 37.

Committee/Public Comments:
Alternative Committee Member Patterson asked if the PID includes public outreach. Daryl Halls stated that the PID will provide resources to do so.

Committee Member Spering requested to agendize the public outreach process for a future meeting.

Committee Member Davis stated that a public input process was needed, but that the committee needed to respond to the UBP proposal first prior to putting the project out to bid.

Committee Member Luce stated that he conditionally agreed with Davis depending on the response to the questions from UBP to see if the project can be shaped to meet the needs of the Committee or not.

Diane Steinhauser stated that between the PFAL Report and PID document, these will answer many of the questions being asked.

Alternative Committe Member Patterson stated that as a project proponet, she thought a commpetive bid process would be required. PFAL, indicated that the Tool Kit they will produce can address how an Unsolicited Proposal should be handled.

Committee Member Garcia indicated he would like to see a competitive bidding process.

Committee Member Gorin stated she would like to see a public process so that the public can know about the process as it progresses.

Committee Member Davis stated that at this point in the process, considereing we don't even know exactly what the project is, that it is too early to know what the details of the process will be yet.

Alternate Committee Member Patterson stated she likes the idea of using interactive websites for publis outreach as it allows people to gain information as their time allows. It is a way to give more people an oppertunity to particate at meetings.

Committee Member Arnold stated that she likes to be able to show the public details of a project from the beginning.

Alternative Committee Member Patterson asked how does the public outreach process occur. Daryl Halls responded that it depends on the path that the committee takes.

Committee Member Rabbit stated that he was concerned with the liability of publicly funding the project due to cost overruns, which would be the responsibility of taxpayers. He said he liked the idea of a contractor being responsible for project delivery.

Committee Member Davis stated that it was too early for public outreach or an RFP as there is no project proponent yet. He mentioned that CMA's and BCDC do need to be invited so they know what is going on.

Recommendation:
Authorized the ***four North Bay MTC Commissioners*** to submit a formal funding request to the Metropolitan Transportation Commission for a SR 37 Project Initiation Document.

On a motion by Committee Member Spreing and a second by Committee Member Luce, the Policy Committee approved the recommendation as amended shown above in ***bold italics***.

6. Committee Comments:
None Provided.

7. Future Topics

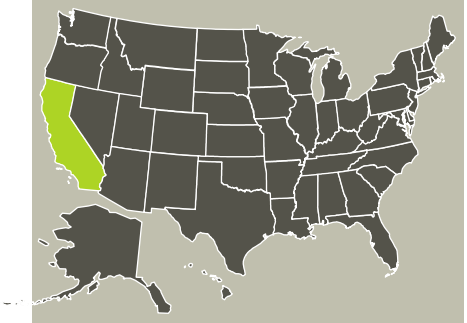
A. SR 37 Corridor Needs by County
(Presentation: SR 37 Project Leadership Team)

B. SR 37 Passenger Rail Option
(Guest Speaker: David McCrossan, Menzies and McCrossan, LLC)

8. Next Meeting – Thursday, September 1, 2016, 9:30 a.m., Marin/Sonoma County.

- ✓ TOLL REVENUE
- ✓ PRIVATE FINANCING
- ✓ COMPLEX CONSTRUCTION
- ✓ CALIFORNIA PROJECT
- ✓ TIFIA LOAN
- ✓ ENVIRONMENTAL SENSITIVITY

SOUTH BAY EXPRESSWAY



SAN DIEGO, CA

The South Bay Expressway ("SBX", formerly known as SR-125) project was the first public private partnership ("P3") in California, developed pursuant to California's AB 680 legislation passed in 1989. This was also the first toll road in San Diego.

BACKGROUND + PROJECT DRIVERS

SBX had been in California's transportation plans since the 1950's. In 1976, SBX was removed from the state highway system plan when funding could not be identified for the project. In 1984, the San Diego Association of Governments ("SANDAG") added SBX to the Regional Transportation Plan, but as before, funding for the entirety of the project was never identified.

The need for the project was driven by:

- Observed and expected population growth around the city of San Diego
- Observed and expected commercial traffic growth in the south east part of San Diego County, an area of expanding trade with Mexico at the Otay Mesa Port of Entry
- Observed and expected economic growth and activity in Chula Vista and Otay Mesa, which at the time were largely undeveloped

SBX was expected to achieve the following goals:

- Complete a missing link in the San Diego freeway network
- Reduce traffic congestion in the suburbs of San Diego including the city of Chula Vista, where significant population growth was expected
- Reduce travel time by 34% from Otay Mesa to San Diego and by 75% in the reverse direction
- Improve regional mobility in the South Bay; and
- Give residents and businesses access to employment centers on both sides of the US-Mexico border

FINANCIAL CLOSE
23 May 2003

OPENED TO TRAFFIC
November 2007

DELIVERY METHOD
DBFOM, 35 years

CAPITAL VALUE
$635 million

FINANCING
Private, toll revenue

TOLL RATES
Fastrak: 50 cents to $2.75
Cash/Credit: $2 to $3.50

ROUTE
10 miles in length
Connects SR 905 to SR 54

REVENUE
$32.0m in 2015

RIDERSHIP
44,200 AADT in 2016
40,378 AADT in 2015

POPULATION (2013)
3.15m San Diego County
476,896 South Region

MEDIAN INCOME (2013)
$67,753 San Diego County
Approximately $52,000 South Region

UNEMPLOYMENT (2013)
9.54% San Diego County
11.97% South Region

DELIVERY METHOD ASSESSMENT

There is no indication that other delivery alternatives aside from a toll road were seriously considered for the SBX project, or that any affordability analysis was conducted for the project. However, industry literature from the late 1980's and responses to the ideas proposed therein suggests a strong, growing interest and coalescing of public opinion around the idea of using public private partnerships to deliver badly needed infrastructure.

In 1989, a framework for delivery using private funding was established in California in the form of AB 680. The bill's aims were to introduce private capital in cash-strapped California, to introduce private sector efficiency to infrastructure delivery, and to reduce congestion while providing "reasonable profit" to the state's potential private partners. AB 680 was model legislation in that it provided a framework not only to regulate concessions before any were even in the negotiation phase, but also in that it provided testing grounds for the concession model that was being used to deliver infrastructure in Virginia and overseas in Australia and Europe.

In 1988, a half-cent sales tax was implemented in San Diego County called "TransNet" which resulted in sufficient funds being raised to fund the "GAP/Connector" road, which would be needed to link SBX with Route 54. The parties agreed to include acquisition, design and construction of the GAP/Connector in the SBX Franchise Agreement. This GAP/Connector portion was constructed with public funds and the parties agreed the public's use of the GAP/Connector would always be toll-free.

While the TransNet sales tax increased available transportation funding, the county estimated that the funded needed to build SBX under a traditional delivery model would not be available until 2020.

Benefits

Using a public private partnership, the County was able to open a new highway facility 13 years earlier than a traditional delivery model.

PROCUREMENT APPROACH

AB 680 generated great interest in a private toll road option, and in 1989 Caltrans issued an Request for Qualifications ("RFQ") to firms who were interested in designing, permitting, building, operating, and maintaining SBX as a toll road as permitted by AB 680. Under the franchise agreement, the private developer would assume responsibility for raising capital for the project and constructing the road in exchange for a 35-year toll concession. Caltrans would retain ownership of the highway, but lease the road back to the franchisee. In all, 13 firms responded to the RFQ. The competitive procurement process ended at the RFQ stage. Rather than shortlisting firms to respond to an RFP with detailed project specifications, Caltrans selected a respondent to proceed with the development of the project.

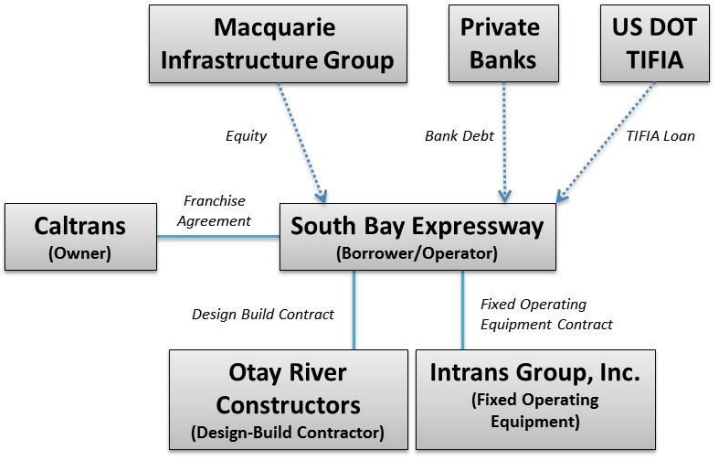
California Transportation Ventures ("CTV," now SBX LLC, was then an equal partnership among Parsons Brinckerhoff, Inc., Transroute International S.A., Fluor Daniel Corporation, and Prudential Bache Capital) was selected to develop the long-planned extension of SBX as a toll facility. In January 1991, Caltrans and CTV signed a franchise agreement for the project, which allowed CTV to finance and construct the roadway with title transferring to Caltrans upon construction completion. Caltrans also leased back the operational rights for a 35-year concession period. Toll rates would be set by the concessionaire, subject to a cap on its rate of return. The agreement also prohibited Caltrans from building any competing roads that could divert traffic away from the SBX.

Under the franchise agreement, CTV was to develop and submit final environmental documentation for the project by December 1997 with Caltrans acting as the lead agency for the environmental process. After delays due to legal challenges, unanticipated complications, shifting responsibilities, and other factors, the project finally received environmental approval in 2003, 12 years after the franchise had been awarded to CTV in principle.

Under the franchise agreement with the state, CTV's "reasonable return" on investment was capped at 18.5% over the 35-year period of the lease. At financial close in 2003, the project's capital requirement was $635 million, more than 50% higher than the projected $400 million project cost in 1990. CTV cited that $40-50 million of the project's increased costs were needed to cover environmental mitigation expenses, including research and maintenance of endangered butterfly and owl species, acquiring 1000 acres of land to be used as an open space preserve, and building and maintaining local parks, playing fields, campgrounds, etc. In addition, the franchise was responsible for approximately $5 million per year in property taxes throughout the time period of the agreement, as well as road maintenance and enforcement costs.

CTV struggled to finance the project without access to the tax exempt markets. However, in 2003, just after the environmental permits were issued, CTV awarded a design-build contract for the project and shortly thereafter was acquired by Macquarie Infrastructure, who established SBX LP as the new concession company implementing the project.

ORGANIZATION CHART



FINANCING

- A $340m term loan and accompanying interest rate swaps with a tenor of 18.5 years was provided by Spanish bank Banco Bilbao Vizcaya Argentaria (BBVA) and Irish bank DEPFA Bank, plc. The loan was backed by toll revenue.
- A $140m TIFIA loan was provided by FHWA, one of the first 5 loans to be issued by the TIFIA program. The rate on the TIFIA loan was 4.46%. The TIFIA loan was also backed by toll revenue.
- Donated right of way was valued at $48m.
- Investor equity of $130m was contributed to the project for construction.

CONSTRUCTION

Following financial close, construction began in May 2003 and SBX was substantially completed in November 2007, roughly one year behind the original schedule.

The project's construction cost overruns were significant. One of the most striking features of the expressway is the Otay River Bridge. It is one of only two precast segmental bridges in the state, stretching three quarters of a mile and towering 18 stories high. Several sources cite increased costs of the Otay Mesa Bridge due to the requirement to accommodate future light rail as a major source of additional costs. However, other sources cite micromanagement by Caltrans that slowed the design approval and construction processes, added environmental mitigation costs, legal costs, and interface issues arising from the separation of the design-build and tolling operations contracts as other significant contributors to the project's overall financial welfare.

OPERATIONS

The highway opened to traffic in November 2007 in the height of the subprime mortgage crisis. Chula Vista and Otay Mesa were among the areas hardest hit in the global financial crisis, with unemployment levels in the area quoted by some sources to be as high as 18%. The severe impact of the economic downturn took a major toll on the suburban communities the expressway was built to serve, and ridership on the newly opened SBX was far below expected projections for commuter, casual, and commercial traffic.

Electronic tolling on SBX began in January 2008 following delays in activating the tolling system for the facility. Toll revenue forecasts failed to materialize. In 2008, the road's $22m in toll revenue was 30% below projections. In 2009, the road's $21m in revenue was 50% below projections.

Despite financial distress and reorganization, the road has operated continuously and remained open to traffic since that time.

In March 2010, SBX LP filed for bankruptcy. During the bankruptcy, the court reviewed over 62 claims totaling more than $1 billion that were made against the Concessionaire, nearly all of which were found to be invalid according to court filings. According to FHWA, while the primary cause of the bankruptcy filing was ongoing litigation related to claims by the contractor that built the SBX project, toll revenue collections on SBX had also fallen well short of the original projections.

SBX's reorganization plan was confirmed by the bankruptcy court in April 2011. It settled the outstanding litigation with the contractor and established a new concession company ("SBX LLC")

under the ownership of TIFIA and project's commercial lenders, who would share future toll revenues.

To avoid further lawsuits after SBX emerged from bankruptcy, a consideration was paid to the contractor as part of the bankruptcy settlement out of the project company's existing cash pool. This settlement amount was not made public.

ENR reported that the contractor was obligated to write off over $95m in unsuccessful claims following the conclusion of the bankruptcy process. Other sources reported that the equity investor and the contractor together had amassed bills for legal advice of over $80m through the duration of the construction period and the bankruptcy process. These funds were paid by the private sector.

CURRENT STATUS

SBX LLC emerged from bankruptcy in April 2011, owned by the private lenders and TIFIA lender, with a restructured and reduced debt burden. The franchise agreement remained in place and unchanged.

SANDAG purchased the SBX franchise from the new owners. The rationale for the purchase was that lowering the tolls on the road would encourage additional ridership and alleviate traffic on nearby highways. Under the terms of the $344.5 million sale, which closed in December 2011, the private lenders' restructured loans were repaid and the TIFIA loan remained in place. The TIFIA program issued a new loan under the same terms as in the reorganization plan and received a cash distribution of $15.4 million.

Soon after completing the sale of SBX, SANDAG lowered toll rates on the facility to attract more local and through traffic and relieve congestion on I-805, a parallel route. Control of SBX is scheduled to revert to Caltrans in 2042 under the terms of the original franchise agreement.

According to SANDAG, the road is performing above expectations and a rating upgrade is expected from Fitch. SANDAG has found the road is profitable and demonstrates the agency's successful investment in a road that it purchased for a price below the cost of the highway's construction.

The public sector agencies in the SBX story have, by all accounts, fared well. It is not uncommon for claims to be filed by contractors against Caltrans (and other public entities) on publicly-funded projects. Public records of Caltrans' claims liability were not found.

In 2009, the State strengthened California's public-private partnership law to reduce Caltrans' claims liability exposure, which deserves further consideration in the context of the typical risk allocations in a public private partnership and the roles that agencies like Caltrans play in facilitating (or hindering) progress on complex construction projects.

SANDAG was able to acquire a profitable and important highway link for 54% of the construction price and discussions with SANDAG officials suggest that SANDAG is pleased with the road's performance. The TIFIA lender's repayment terms have been adjusted from the 2003 loan agreement with the intent of allowing USDOT to recover all of the principal and capitalized interest that were originally contemplated back when the loan closed.

ROLES + RESPONSIBILITIES

RISK	OBLIGATIONS ASSUMED BY CALTRANS	OBLIGATIONS ASSUMED BY CONCESSIONAIRE
Design and Construction	Oversight	Yes
Financing		Secure financing
Traffic and Revenue	10 year franchise extension to be entertained if 18.5% equity IRR cannot be achieved	Full revenue risk assumed by Concessionaire
Toll Rate Setting		At Concessionaire's discretion subject to an 18.5% cap on equity return
O&M and Major Maintenance		Yes, services contracted to Caltrans
Insurance		Yes
Change in Law (discriminatory)	Yes	
Environmental Permitting & Licensing		Yes
ROW Acquisition	Reasonable Assistance	Yes
Hand-back	Oversight	Yes
Police and Emergency Services		Yes
Environmental		Yes
Termination for Convenience	Not applicable	
Protection from Competitive Transportation Facilities	Yes	
Federal Requirements	Reasonable assistance	Yes
Force Majeure	Shared	Shared

APPLICABILITY TO HWY 37

At the time of its passage AB 680 was considered groundbreaking legislation to enable private involvement in developing public-use highway infrastructure. However, the bill placed nearly all project risks on the private sector and precluded the use of public funding for the project. Sources cite these restrictions as terminal for two of the projects originally planned under the act and for causing the severe delays observed in SBX's construction.

One criticism that has been leveled at the SBX project parties is that the government did not play a sufficient role in defining the project or in assisting bidders in understanding the needs of the government or the project rationale. This resulted in a wide range of proposed alternatives from the large number of pre-qualified bidders. While not specifically referenced in any of the reviewed sources, we suspect that there was difficulty in evaluating and comparing the bids which were responding to different interpretations of the project definition. In current P3 transactions, one on one meetings with bidders are frequently using during a procurement to enable bidders to ask questions and for government to provide clarifications.

The environmental clearance process was arduous, expensive, and exhausting to the project parties. A key takeaway from the experience on SBX is that the public sector is best qualified to manage the risks of the CEQA process. Some sources that were reviewed alluded to an environmental clearance process that was stymied and slowed by a public that was strongly opposed to tolls and suspicious of private participation in public infrastructure delivery. In our experience, most credible potential private sector partners will avoid investing in P3 initiatives that have not already achieved environmental clearance, primarily because it is viewed as a high-risk effort that requires message management and leadership from government.

The same can be said for obtaining other public agency permits for the project, and for securing land for right-of-way. Public sector sponsors of these projects can better manage the risks of dealing with other public permitting agencies or acquiring property by using its powers of eminent domain. Having public sector partners involved in or being fully responsible for these functions will reduce project risks for private sector partners and thereby enhance the attractiveness of the P3 project to the private sector, which in turn will improve competitive tension among bidders.

Public opinion is generally against new toll facilities, and one of the important take-aways from the SBX experience is that public message management is critical to the success of a project. Support among local agencies for an improvement in service and travel alternatives is a case that needs to be made to the public and to decision-makers in a way that is strategic and credible.

WHAT LEGISLATION NEEDS TO BE ENACTED TO PERMIT A SIMILAR EFFORT FOR HWY 37?

P3 enabling legislation should be more flexible in defining the roles and responsibilities of public and private sector partners. For a project of the size and complexity that is anticipated for Hwy 37, particularly in an area where users may not be accustomed to paying tolls, a real toll risk option may discourage competitive tension. Some public backstop for debt repayment, whether that is in the form of some type of payment guarantee, a minimum revenue payment or a full availability payment, there are several proven alternatives that warrant maintaining payment mechanism flexibility in new legislation for Hwy 37.

Other state P3 statutes permit the use of both public and private sector funding and allow the partners to assume different roles and responsibilities for the project commensurate with the risks and potential for return from the project proceeds. Many of the financial hurdles that existed when SBX was financed have been removed. Private Activity Bonds are now a commonplace tax-exempt option used in many P3 transactions. New legislation should contemplate the use of tax exempt financing to achieve the lowest possible cost of capital.

SOURCES OF INFORMATION

http://www.infra-deals.com/deals/316061/sr-125-south-highway.thtml; Accessed August 8, 2016

http://www.fhwa.dot.gov/ipd/project_profiles/ca_southbay.aspx; Accessed August 8, 2016

In Re South Bay Expressway, LP, 434 B.R. 589 (Bankr. S.D. Cal. 2010) United States Bankruptcy Court, S.D. California July 28, 2010

In Re South Bay Expressway, Lp, 455 B.R. 732 (Bankr. S.D. Cal. 2011) United States Bankruptcy Court, S.D. California June 27th, 2011

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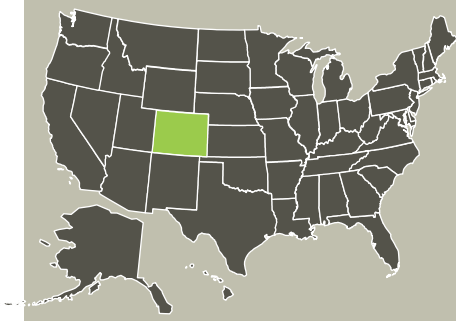
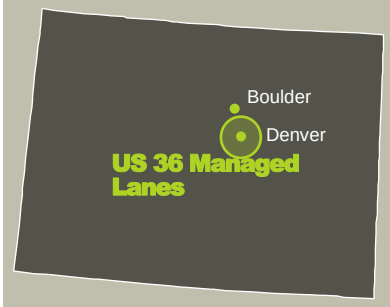
- ✓ TOLL REVENUE
- ✓ PUBLIC FINANCING
- ✓ PRIVATE FINANCING
- ✓ COMPLEX CONSTRUCTION
- ✓ MANAGED LANES
- ✓ TIFIA LOAN

US 36 MANAGED LANES





DENVER, CO

The High Performance Transportation Enterprise (“HPTE”) was created in 2009 as a government-owned business and a division within the Colorado Department of Transportation (“CDOT”). It is responsible for seeking out opportunities for public-private partnerships (“P3s”) through any available means of financing that allows for efficient completion of road and bridge projects. Under HPTE’s US 36 P3 project agreement, the private sector designed, constructed, financed and is operating and maintaining managed toll lanes on US 36 in exchange for toll revenues.

BACKGROUND + PROJECT DRIVERS

Over half of CDOT’s $1.5 billion annual budget is dedicated to maintenance of the state’s existing highway system. There are limited resources to improve congestion and mobility: CDOT is projecting an annual shortfall of approximately $600 million per year to maintain and expand its existing transportation system.

CDOT’s ability to keep pace with growth was constrained by state and federal gas taxes that have not increased in the last twenty years. Additionally, due to inflation and increases in fuel efficiency, CDOT is observing a decrease in fuel tax revenue.

In the meantime, CDOT needs are not stationary. As a result, CDOT has initiated several programs to try to do more with the available resources. Senate Bill 09-108, also known as the Funding Advancements for Surface Transportation and Economic Recovery Act of 2009 (“FASTER”), was passed by Colorado lawmakers in 2009. It authorized state officials to look for innovative ways to finance and construct major highway projects since traditional sources of highway funding, including federal and state fuel taxes, are insufficient.

The High Performance Transportation Enterprise (“HPTE”) was created as a result of the FASTER Act. HPTE is a government-owned business and a division of CDOT. The purpose of HPTE is to pursue P3s and other innovative means, such as operating concessions, variable tolling, availability-based contracts, and design-build contracting, to complete surface transportation projects in Colorado.

CDOT/HPTE’s first P3 project under this legislation was the US 36 Express Lanes Project (US 36). US 36 is a new 5.1 mile four-lane divided multi-modal highway project that built an Express Lane in each direction on US 36, in addition to the two free general-purpose lanes. The Express Lanes accommodate High Occupancy

FISCAL YEAR APPROVED
September 04, 2014

OPENED TO TRAFFIC
March 2016

DELIVERY METHOD
Phase I: Design Build
Phase II: DBFOM, 50 years

CAPITAL VALUE
$497 million

FINANCING
Public / Private -Toll Revenue

TOLL RATES
Morning peak $8.75 ($16.33 w/o pass)

ROUTE
Multi-modal project on US36 from Federal Boulevard to Table Mesa Drive in Boulder

RIDERSHIP
100,000 trips per day

POPULATION (2013)
650,000 Denver
5.2m Colorado

MEDIAN INCOME (2013)
$62,760 Denver

UNEMPLOYMENT (2015)
4.2% Denver/Colorado

Vehicles ("HOV") and Bus Rapid Transit ("BRT"). In addition, the project replaced several bridges, built a commuter bikeway, added BRT improvements, and installed Intelligent Transportation Systems ("ITS") for tolling, transit and traveler information, and incident management.

As a congested and rapidly growing corridor carrying between 80,000 and 100,000 vehicle trips per day and operating at nearly 90 percent capacity, the US 36 experienced three to four hours of severe bi-directional congestion daily. The need for the project was driven by the desire to:

- Improve the condition of the highway
- Replace bridges that were in poor condition
- Provide congestion relief
- Expand mode of travel options
- Increase efficiency of transit service Delivery Method Assessment

For US 36, the goals of the project included:

- Maximize scope and improvements within the project budget;
- Minimize operating and life cycle maintenance costs and provide a long term, high quality product;
- Deliver the project ahead of schedule;
- Minimize inconvenience to the public and maximize safety of workers and traveling public;
- Maximize engagement of local workers, businesses, and communities in the development, construction and sustainability of improvements.

The project was split in to two phases. Phase I was procured separately under a design-build arrangement. Phase I was a 10-mile Managed Lanes project, which opened in July 2015. The new 5.1 mile Phase II Managed Lanes opened in March 2016.

Under the US 36 P3 performance-based arrangement, the concessionaire is responsible for operations & maintenance ("O&M") and toll collection for Phase I, Phase II and the existing 7.7 mile I-25 reversible managed lanes project. Note the performance-based contract means that financial deductions are made for poor performance e.g. failure to meet the operations and maintenance standards such as snow plowing and travel time delays to transit.

Phase I: Design-Bid-Build:

Phase I of the project was delivered using a design-build approach. The project was funded and financed with a mixture of Federal, State and Regional Transportation District ("RTD") funds, including a federal Transportation Infrastructure Finance and Innovation Act ("TIFIA") loan, the repayment of which was supported by tolls. Additionally, a federal Transportation Investment Generating Economic Recovery ("TIGER") grant, as well as direct contributions from the City and County of Broomfield and the City of Westminster. RTD's substantial commitment to Phase I of the project came with an understanding that

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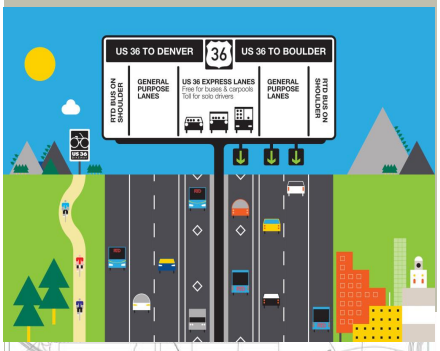

partial completion of the corridor improvements did not fill the overall need, and commencement of Phase II should begin before completion of Phase I. CDOT and the local partners shared that view.

Phase II: Design Build Finance Operate Maintain P3:

The decision to enter into a P3 for Phase II was justified by a Project Value Analysis ("PVA") or Value-for-Money Analysis. A PVA is a risk-adjusted analysis that shows, in Net Present Value terms, the benefits and costs of delivering a project using a traditional "public model" compared to a P3 concession model. HPTE analyzed the value that Colorado and its taxpayers would derive from having a private concessionaire build, operate and maintain the US 36 project, along with the I-25 express lanes, under a long-term agreement instead of using a traditional design-bid-build delivery. The analysis considered the level of public subsidy required, including the net revenue expected over the 50 year operating term of the concession agreement. The qualitative factors used for the P3 assessment were:

- Deliver project with lowest upfront public subsidy
- Transfer risk to concessionaire
- Relieve CDOT of Phase I O&M obligations
- Construct Phase II Managed Lanes Reconstruction of General Purpose Lanes in an effective and economical way
- Facilitate RTD's Bus Rapid Transit programs
- Optimize asset condition over long term
- Minimize inconvenience to public and maximize safety of workers and the traveling public.

With the goal of reducing the upfront public subsidy, the P3 model was the preferred alternative. Given HPTE and CDOT's limited financial resources, they were concerned about the potential financial exposure if revenues were lower than expected over fifty years, or other related costs were higher than forecasted. Therefore, the transaction structure that HPTE reached was to transfer the majority of the major project risks, including financing and maintenance risks, while retaining for the state the right to share in excess revenues generated by the highway if toll income exceeds forecasted targets over the life of the agreement. Over the useful life of the asset, the P3 approach was considered the best value alternative for taxpayers.

The final version of the PVA was completed in March 2014, once Plenary Roads Denver ("Plenary") had been selected and negotiations were nearing completion.

PROCUREMENT BENEFITS

Transfer project risk to private partner:
Colorado weighed risks versus the rewards in selecting the P3 model. The preferred alternative was to transfer project risks i.e. financing, operation and maintenance, and lifecycle replacement risks, while retaining the right to share excess revenues generated by the highway if toll income exceeds pre-determined

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targets over the life of the agreement. This approach limited the state's exposure if toll revenues were lower than expected, or if maintenance costs were higher than anticipated, yet the revenue-sharing provision allows for upside gain if toll traffic and income were more robust than predicted. There was no contractual guarantee for a minimum level of revenue for Plenary. The system uses a dynamic tolling with toll rates set by the concessionaire based on a schedule that is incorporated in to the concession agreement. Any changes to the dynamic tolling algorithm must be approved by HPTE.

Revenue sharing mechanism:
Excess toll revenue to which the state is entitled will be dedicated to ongoing transportation improvements in the corridor. HPTE signed an agreement with cities and counties in the US 36 corridor that allows them to participate in deliberations over how the state would spend excess toll revenue, should it materialize, to boost mobility and transit options in the corridor. This was an important mechanism of sharing control and gaining local support for the project.

"Freed up" public funds for other uses:
HPTE contributed a subsidy to the project to help meet the project's affordability requirement. The upfront public subsidy was minimized and was used to pay only a portion of the total cost of the project. All other project costs will be paid with toll revenue over the 50-year concession period. This freed up cash available from public funding sources to be applied to other projects in the near term.

Project delivered sooner:
Using the P3 model, the concessionaire provides equity and debt to cover upfront project costs rather than waiting until funds become available over time from traditional public sources. As a result, the project delivery was accelerated by 20 years.

PROCUREMENT APPROACH

The 24-month procurement process included several steps which involved CDOT, HPTE and local governments. The outline of the procurement process was as follows:

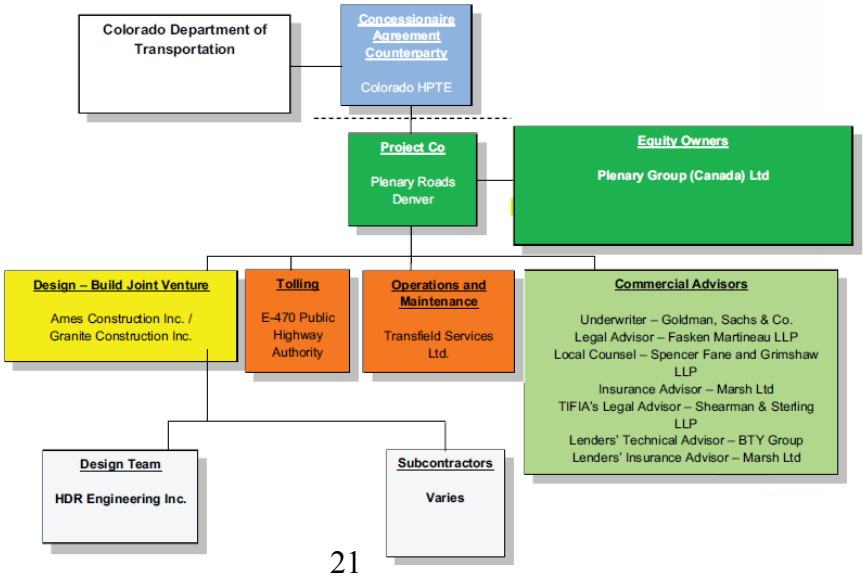
- Request for Qualifications ("RFQ") released February 2012;
- Four teams responded by April 2012. Three were short-listed;
- Final Request for Proposals ("RFP") released August 2012;
- Submissions were evaluated on the technical proposal, financial capacity, experience and qualifications of team;
- Plenary selected April 2013;
- Commercial Close July 2013;
- Financial Close February 2014.

The Plenary team included; Ames Construction, Granite Construction, HDR (as designer/engineer) and Transfield Services O&M. Toll collection is performed by the E-470 Authority, an existing public agency in the Denver region that manages other highway tolling projects i.e. I-25 and E-470 highways.

During the procurement process, bidders needed to include Phase I's existing TIFIA loan in their financial plans. However, they lacked complete information on how to legally achieve the transfer of the loan to a new borrower. This caused a delay to the procurement schedule and increased costs by about $5m due to interest rate increases between the proposal due date and financial close. The financial close deadline was scheduled for October 2013, but it was extended four times to accommodate the loan negotiations between HPTE, Plenary and the TIFIA lender. In addition, the federal government shut-down occurred during the loan negotiation period, which also contributed to the delay. Financial close occurred in February 2014, almost 1 year after proposals were delivered and 5 months after the date scheduled in the RFP.

Following commercial close and prior to the planned financial close date, Colorado legislators requested 60-days to review the executed P3 agreement, citing the need for improved transparency on the terms of the agreement. This review process delayed financial close. A subsequent bill aimed at improving transparency was introduced in June 2014. The bill was subsequently rejected by the Governor due to concerns that the provisions would constrain interaction with the private sector and stifle the viability of future P3s. "We firmly believe that government should always strive to be transparent and accountable," he stated in a letter to the Senate. "These constraints on business terms would create a chilling component on future transactions, making investors unlikely or unwilling to bid on Colorado projects due to the increased risks this process would generate." This is an important lesson. Any enabling legislation should include all the necessary steps for good governance to be laid out and agreed in advance while protecting commercially confidential bid details. Certainty for public and particularly private sector parties reduces risk and increases the value for money proposition.

ORGANIZATION CHART



FINANCING

Plenary will receive toll revenue collected on Phases I & II and the I-25 Express Lanes over a 50-year period which will be used to repay project debt, O&M costs, and a return on equity.

The project was financed with;

- $20.36m of series 2014 tax-exempt private activity bonds (“PABs”);
- $60m TIFIA loan;
- $55m (Phase I, TIFIA loan);
- $20.6m junior subordinate loan from Northleaf Capital;
- Equity committed by Plenary of $20.8m.

The PABs, which pay a fixed coupon of 5.75%, priced at 98.241 to yield 5.875%. The PABs have a 30-year maturity. The new TIFIA loan carries an interest rate of 3.68%. Fitch Ratings assigned a BBB- rating to the TIFIA loan and senior PABs.

CONSTRUCTION

CDOT acquired all the necessary right-of-way for the project. Overall the construction was delivered on time, but initially there was a delay in closing the Phase I TIFIA Loan refinancing. This could have been avoided with earlier engagement with the TIFIA loan program.

In order to keep the project on time and on budget during the delay to financial close, HPTE negotiated a concession agreement amendment to permit Plenary to undertake utility work and certain other tasks to avoid a delay in completing Phase II of the

construction. The amendment obligated HPTE to pay for approximately $8.8m in utility work and $750,000 for early works prior to the project’s financial close. It is important to note that these tasks were part of the project budget and did not increase the project’s overall costs. However, if HPTE had been unable to reach financial close, HPTE would have been responsible for paying for these tasks.

TOLLING & OPERATIONS

As part of the P3 agreement, Plenary assumed toll collection and O&M responsibilities of US 36 Phase I, Phase II and for the existing I-25 Express Lanes. The existing general-purpose lanes remained free for all commuters. When executing the P3 agreement, Plenary agreed a schedule of maximum toll rates and certain minimum toll rates that could be charged under a dynamic pricing model, while maintaining certain safety and performance standards such as average vehicle speeds and journey times.

Establishing a maximum rate allows the public sector to maintain a certain level of control and approval rights over future toll rate increases beyond the defined rates. Conversely, the private sector investment and lending community can gain comfort that with the fact that approved toll rates are defined at financial close within these limits.

The toll rates on the North I-25 Express Lanes range in price depending on the time of day to ensure a reliable travel time for people in the Express Lanes. For example, on the southbound North I-25 Express Lanes during peak travel times, 7:15-8:15 a.m., the toll rate for drivers with an ExpressToll account and pass was $2.25, and the License Plate Toll (“LPT”) was $5.56. On northbound I-25, between US 36 and 120th Avenue, toll rates from 4:30-6 p.m. was $3 for drivers

with an ExpressToll account and pass, and $6.75 for an LPT.

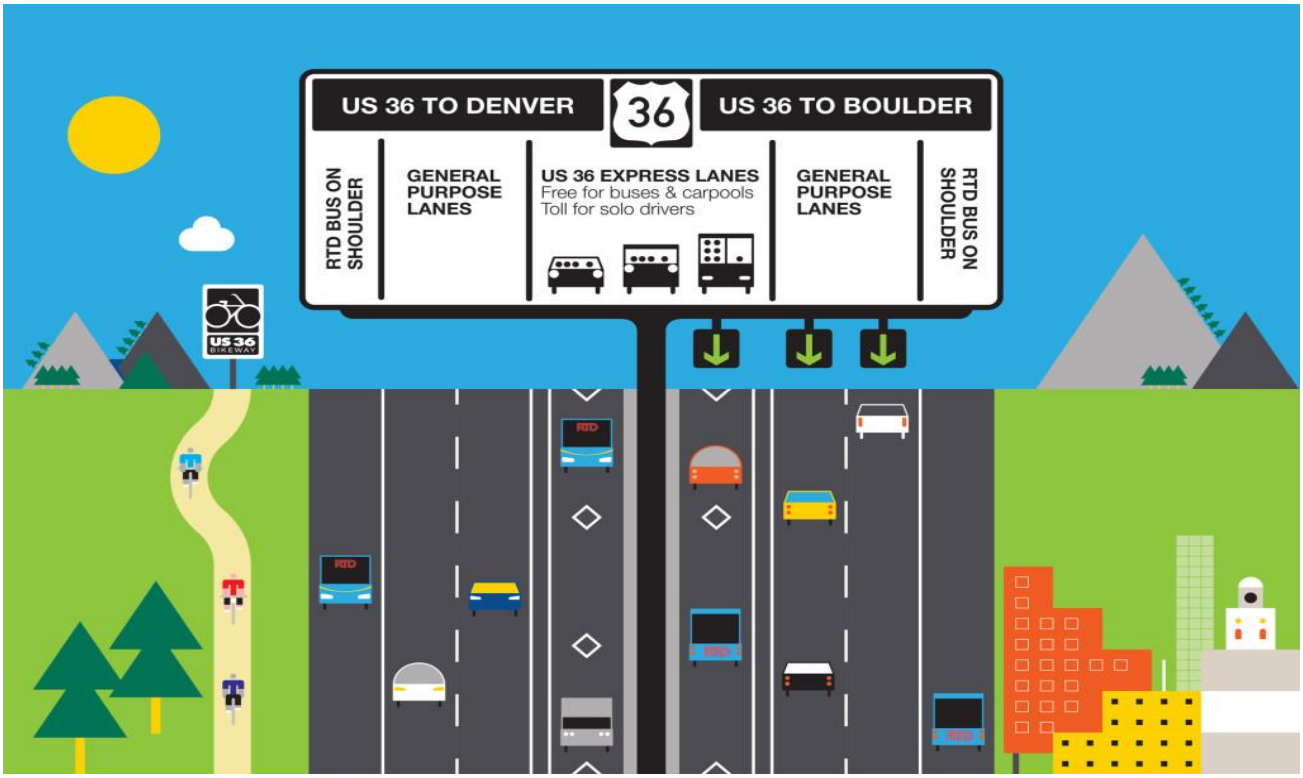
With the opening of Phase II, the overall project was complete. The toll rates approved by the HPTE Board vary at different times of day to manage congestion and ensure a reliable travel time in the Express Lanes. From Table Mesa to downtown Denver, the morning high peak (7:15 a.m.- 8:15 a.m.) is $8.75 with an ExpressToll pass. Without a pass, a surcharge is applied, and the cost increases to $16.33. At afternoon hours (3:30 p.m.- 4:30 p.m.), the ExpressToll rate decreases to $3.45 with an ExpressToll pass and to $8.70 without a pass. The toll rates for the same trip with an ExpressToll pass drop to $1.75 on Saturdays and Sundays and to $7.00 without a pass.

CURRENT STATUS

The project opened to traffic in March 2016 and is operating successfully.

Building off the success of the US 36 P3 and the $1.6b Denver FasTracks light rail P3 which closed in 2010, Governor John Hickenlooper and Denver Mayor Michael Hancock are backing the P3 model to deliver major infrastructure plans in the state and Denver region, with the governor stating Colorado is continuing to explore P3 opportunities.

CDOT and HPTE received the backing of the governor and mayor with the $1.2b I-70 East P3 project which is in procurement at the RFP stage. Other P3s are under preparation at the municipal level, including Denver International Airport terminal building, the National Western Center complex and a Denver Performing Arts Center, including a dozen other projects, with funding ring-fenced for the P3 model. As a result, Denver and Colorado are considered by the private markets to be attractive and competitive markets for P3 investment opportunities.



FUNDING SOURCES

US 36 Phase I	million
Regional Transportation District	$124.0
Colorado Department of Transportation and the Colorado Bridge Enterprise	$77.7
Future US 36 Phase I Toll Revenues advanced through a Federal Transportation Infrastructure Finance and Innovation Act (TIFIA) loan	$54.0
Denver Regional Council of Governments	$46.6
HPTE (I-25 Toll Revenues and Federal Transportation Investment Generating Economic Recovery [TIGER] Grant)	$10.0
City and County of Broomfield and City of Westminster	$5.6
TOTAL	**$317.9**

US 36 Phase II	million
Toll Revenues on I-25 and US 36 (from both Phase I and II) advanced by the concessionaire	$120.0
Regional Transportation District	$18.5
Denver Regional Council of Governments	$15.0
Colorado Department of Transportation	$15.0
Boulder County, the City of Louisville, and the Town of Superior	$11.0
TOTAL	**$179.5**

ROLES AND RESPONSIBILITIES

Risk	Obligations assumed by CDOT/HPTE	Obligations assumed by Concessionaire
Design and Construction	Oversight	Yes
Financing		Secure financing
Traffic and Revenue	Revenue shared after a minimum rate-of-return targets are met for the Concessionaire	Full revenue risk assumed by Concessionaire
Toll Rate Setting		Yes, subject to restrictions
O&M and Major Maintenance	Oversight	Yes
Snow & Ice Removal		Yes
Insurance		Yes
Change in Law (discriminatory)	Yes	
Environmental Permitting & Licensing Updates		Yes
ROW Acquisition	Yes	
Hand-back	Oversight	Yes
Police and Emergency Services	Yes	
Initial Environmental Approval	Yes	
Utility Relocation	Shared	Shared
Geotechnical Condition	Shared	Shared
Protection from Competitive Transportation Facilities		No
Federal Requirements		Yes
Force Majeure	Yes	

APPLICABILITY TO HWY 37

Legislation:
California does not have the legislative restrictions that necessitated Colorado to established HPTE, but having a dedicated function and resources (i.e. 4 full-time equivalents budgeted yearly) focused on innovative means to deliver major infrastructure projects is something that California could benefit from. It is likely that incorporating lessons learned and standardizing documentation and approval processes would make California a more attractive investment opportunity to the private sector and improve the acceptability of the P3 model to taxpayers. For example, new legislation in Colorado, SB 15-172, introduced in 2015 as a P3 oversight bill in the Colorado General Assembly, will improve the P3 process. One of the provisions of the new bill will require HPTE to hold public meetings in conjunction with local governments at the "visioning, initial RFP preparation, and draft RFP stage" of procurement. Additionally, HPTE will be required to provide the P3 agreement's terms to the General Assembly committees that have jurisdiction over transportation after entering into a P3 agreement, and post the terms to its web site. The bill also directs HPTE to evaluate the suitability of express bus service or bus rapid transit for projects that have one or more High Occupancy Vehicle lanes, High Occupancy Toll lanes, or managed lanes.

Revenue sharing mechanism:
The mechanism to share excess toll revenue and shared decision making with the state and local agencies for reinvestment into the corridor was an effective way to cultivate local support and approval from the stakeholders that would be impacted directly by the project. This also improved cooperation on the public sector side between the state, local agencies and cities/counties. A similar mechanism could be considered for the Hwy 37 project.

Public sector management:
An independent performance audit report on the project conducted in March 2015 and commissioned by the State Auditor and Legislative Audit Committee found that HPTE did not have adequate records of management processes for maintaining project-related documents or systematic processes for sharing public records and protecting confidential records under the Colorado Open Records Act. Additionally, HPTE and CDOT did not have a systematic process for monitoring operations and maintenance activities to ensure the concessionaire meets the performance standards outlined in the concession agreement once the project is operational.

The relevance for Hwy 37 is that the success of the P3 model, (i.e. effective and certainty of risk transfer which has been proven in the US and around the world), relies on adopting P3 best practice management and implementation techniques that support timely decision making and a predictable process, particularly once the project has reached financial close. Typically, the private sector comes prepared with the necessary P3 experience and wherewithal; however, with any emerging P3 program and with any project "first", there will be lessons learned and improvements to adopt, especially when public agencies initially lack a comparable level of experience. On the public side, there should be a clear understanding of the P3 approach and how it differs from traditional project delivery (i.e. design-bid-build); otherwise, the public agency will tend to attract many of the risks that it aimed to transfer to the private sector. Typically, for P3 projects, this inspection mechanism is done by an independent party (i.e. an independent engineer) hired and compensated by the project, who is objective to the terms of the agreement and impartial to both the public and private sector. If the independent engineer role is not an option, a compromise could be that the local agencies retain a certain level of oversight and control during this process to sustain a vested position during performance reviews and potential disputes or claims. Ensuring that sufficient public sector management and oversight is dedicated to the project from the very beginning, through planning, procurement, design and construction and the operating period is essential to the immediate and long term success of P3 projects. The public sector would be well-advised to ensure adequate measures are in place to retain institutional memory and project knowledge.

Established traffic data:
Having a multi-stage project meant that there was established traffic data and community acceptance on the use of Managed Lane facilities in the local region (e.g. I-25), allowed COT and HPTE to extract better value, reduce risk and offer a more competitive process for the later staged P3 project scope. CDOT/HPTE is conducting a similar approach for the other highway projects in their pipeline.

WHAT LEGISLATION NEEDS TO BE ENACTED TO PERMIT A SIMILAR EFFORT FOR HWY 37?

Similar to Colorado, California has had a number of successful P3 projects across a number of different sectors (i.e. transportation, public buildings and water) which has injected excitement into the US market, but a bankable pipeline has yet to materialize. Typically, this has been constrained by the short-term nature of enabling legislation, given the time required to prepare and execute major complex infrastructure projects. Caltrans' authority to enter into P3 agreements expires on December 31, 2016, under the current law. The enabling P3 legislation in Colorado, the Senate Bill 09-108, does not have a sunset or expiration date.

In April 2016, the California General Assembly's Transportation Committee approved legislation that will extend Caltrans authority to enter into P3 agreements. The new bill, AB 2742, would allow Caltrans' to enter into P3 agreements until 1 January 2030, which provides for a more reasonable amount of time to build a comprehensive P3 pipeline of projects.

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SR 37 Policy Committee Overall Private and Public Financial Policy Questions

September 1, 2016 SR 37 Policy Committee Meeting

I. SR 37 Corridor Policy Committee Role and Responsibilities

1. What role should the SR 37 MOU Group have in soliciting, responding and negotiating financial proposals?
2. What role should the SR 37 MOU Group have in sponsoring tolling legislation for the corridor?
3. What role should the SR 37 MOU Group have in the corridor design and environmental process?
4. What role should the SR 37 MOU Group have to provide oversite and implement projects on the corridor?
5. When should the JPA be formed? Consideration should be given to the feasibility and possible membership, roles and responsibilities to establish a JPA. If established after an "agreement" has been negotiated with the Proposer, how would this impact the long term success of the project and relationship? Should a JPA be responsible for the full SR 37 corridor or the segment in the proposal?
6. What role will the public agencies play in setting toll levels?

II. Public Process

1. How will the proposer ensure an open transparent process in setting toll rates, project expenditures and profit?

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SR 37 Public Outreach

I. Past efforts

1. Highway 37 Stewardship Study
   Identified corridor challenges and corridor improvement concepts through a collaborative, public process. Funded by the Transportation Research Board and developed by UC Davis in coordination with Caltrans District 4 and corridor stakeholders.
   Effort began in 2011 and concluded in 2012.

2. Integrated Traffic, Infrastructure and Sea Level Rise Analysis
   Phase 2 of the Highway 37 Stewardship Study. Focused on the impacts of sea level rise to the SR 37 corridor and identified concept alternatives to address those impacts. Public process was similar to the first phase and was developed in coordination with Caltrans District 4 and corridor stakeholders. Funded by Caltrans.
   Effort began in 2014 and concluded in 2016.

Additional information on both planning efforts can be found on the UC Davis Road Ecology website: http://hwy37.ucdavis.edu/resources

II. Current efforts

1. SR 37 Policy Committee Meetings.
   - Began through a formal Memorandum of Understanding signed by all four North Bay counties Congestion Management Agencies (CMA) in December 2015.
   - The Policy Committee has held public meetings on the first Thursday of every other month starting on January 7, 2016.
   - All meetings have been publicly noticed by each CMA through their individual agency's public meeting noticing process (these generally include web posting, city postings and e-mail distribution).

2. Congestion Management Agency Meetings
   - CMA staff provide SR 37 update reports to their respective CMA Boards.
   - All CMA Board meetings are noticed and open to the public.

3. Other current outreach efforts include special public presentations to the San Francisco Bay Conservation and Development Commission (BCDC) and Solano City County Coordinating Council (4Cs).

4. Websites
   - Solano Transportation Authority (STA) and Sonoma County Transportation Authority (SCTA) maintain websites with options for the public to download SR 37 Policy Committee meeting agendas and power point presentations.
   - Transportation Authority of Marin and Napa Valley Transportation Authority websites provide web links to the STA's and SCTA's download sites
   - SCTA's website also includes web links to planning and project resource documents

STA SR 37 Website Information:
http://www.sta.ca.gov/
SCTA SR 37 Website Information:
http://scta.ca.gov/projects/highway37/

III. Future efforts

1. Continue public noticing and expand public distribution contact list for SR 37 Policy Committee meeting agendas
2. Consolidated Web Page for the SR 37 Policy Committee
    - One consistent web portal for public information
    - Website for a consolidated clearinghouse of corridor planning resources
3. Engage members of the public and stakeholders in the development of a corridor Project Initiation Document (or its equivalent) and environmental and design phases of the project.
4. Staff recommends continuing to do more public outreach early in the project development phase. Options include, but are not limited to public workshops, focus groups, press releases, social media, and website surveys.

Attachment A: Responses to Questions from SR 37 Policy Committee to United Bridge Partners' Unsolicited Proposal Received May 5, 2016
August 30, 2016

Legal/General Policy Questions

1. California P3 legislation that requires that a P3 meet one or more specific objectives:
    a. Improve travel times or reduce vehicle hours of delay.
    b. Improve transportation operation or safety.
    c. Provide quantifiable air quality benefits.
    d. Meet a forecasted demand of transportation.

    Has UBP contemplated whether or not their proposal would be considered a P3, and if so, which of these objectives are met under their proposal? If you rely on current legislation, what specific legislation changes are necessary based on your proposal.

    Response: The United Bridge Partners' (UBP) proposal will achieve the benefits of the four (4) key areas listed and many more. There will be improved travel times, enhanced operations and safety, promotion of clean air, and increased capacity for travel demands along with benefits such as environmental enhancements, protection for sea level rise, new pedestrian access facilities and more. UBP's proposal is not considered a P3 and is not subject to P3 legislation; it follows a model of a fully private proposal that eliminates the need for any government backing or long term financial support. All risks are taken by UBP.

    UBP met with Caltrans Kome Ajise, then serving as P3 Program Manager, and subsequently with Caltrans District 4 leadership and Headquarters P3 team members to discuss the differences between the delivery models. While we have designed a process based on current law that will not rely on significant legislative changes, some modest legislative modifications may be required.

2. Procedurally, Caltrans has indicated that a defined and fleshed out project must be developed before Caltrans would consider financing and funding solutions. Is there an opportunity to see and understand what level of planning, studies and assumptions UBP has made to comply with the state's and region's transportation and land use objectives?

Response: The UBP proposal does not rely upon any funding from Caltrans or any local government. UBP has met with MTC leadership to discuss the regional nature of the UBP proposal and will provide MTC with information needed to ensure inclusion of the project in the currently in process update to Plan Bay Area. It is anticipated that information regarding conceptual alternatives, alignment alternatives, project cost and funding estimates, and project delivery phasing would not be required for a non-Caltrans project (assuming that no change to the existing facility would occur as a result of the relinquishment action). UBP would provide information to Caltrans as needed to support the relinquishment agreement.

a. If not: How does UBP envision fast tracking this process? How does UBP Plan on meeting Caltrans request for addressing the needs to define the project before entering into an agreement?

Response: See answer above. UBP will work collaboratively with Caltrans to determine what information is necessary and provide it as needed to support the relinquishment agreement.

3. UBP does not recognize Caltrans, California Transportation Commission and FHWA in the approval process. What would be UBP's process for approval from these agencies and who is proposed to be the lead? Were there any federal funds used planned to purchase the right of way? If so, did UBP consider appraisals and cost to purchase the facility? What is UBP's proposal to evaluate and compensate the State recognizing the relinquishment value of the corridor facility assets?

   Response: UBP understands the critical role that the California Transportation Commission (CTC) will play in project delivery, in particular approval of the proposed Caltrans request to relinquish the right-of-way to the JPA. UBP would use private funding and would not seek funding from FHWA. UBP is unaware of any federal law that would require FHWA appraisal. UBP does recognize Caltrans' role in the process and anticipates working collaboratively with Caltrans to design the project using Caltrans design standards, which are consistent with FHWA standards. The project would not be a federal facility, however federal and state environmental agencies will be involved in the permitting process.

   The State's responsibilities to the maintenance, upkeep and sea level rise issues are a cost liability. We will remove this liability and cost from the state so that the state can save money. With UBP taking on the liability of the existing roadway and its current and future needs, we do not anticipate a payment to the State.

4. What has UBP assumed for easements and potential condemnation of rights for rail facilities at SR121/SR37 intersection, flooding easements and ROW throughout the corridor? What analysis was completed by UBP for relinquishment of property access rights along the corridor? Will existing and future access rights be maintained for adjoining landowners both eastbound and westbound? If property rights are determined to be necessary, will UBP include cost of acquisition in the proposal and who will perform any potential acquisition if any is required?

Response: We have planned to go over the rail facilities at an approved elevation, working closely with the rail owners to ensure proper planning for any future clearances. Based on the right-of-way boundaries we have seen, we intend to design the expansion within the existing right-of-way. Final permitting conditions will determine if additional property will need to be obtained to achieve these requirements. We will obtain what is needed.

UBP will maintain existing property access for adjoining land owners in the corridor, both eastbound and westbound. If acquisition of property rights is necessary, UBP would include this in the cost of the proposal, at no additional cost to the counties. Ultimately UBP would perform the acquisition.

5. What is proposed to ensure future rail track improvements at the SR121/SR37 interchange are not precluded to address sea level rise (e.g. elevation of flyover)?

Response: The height of the SR121/SR37 interchange will be sufficient to accommodate the eventual need for the railroad to be elevated due to sea level rise.

6. The JPA would have an oversight committee – what types of information would UBP be willing to disclose to ensure an open and transparent process prior to entering an agreement:

    a. Financial statements of the organization?

Response: As a private entity, UBP is not required to disclose financial statements. Prior to close UBP would be willing to provide, on a confidential basis, a summary of the current financial position of the Company. After close we would be willing to disclose some limited financial information, again on a confidential basis, such as routine funding disbursements to the special environmental fund, support funding achieved for low income users, payments made to the MTC for electronic toll collection support and similar information.

    b. Estimated and actual revenue/costs for construction, profit, and financing/managing the facility?

Response: We would be willing to disclose some limited financial information as described above, as well as operational metrics such as vehicle count, transponder penetration and other metrics.

    c. Are they willing to cap revenues and lower tolls as needed?

Response: UBP has made a commitment to cap the toll rate on the facility. Since we are taking unlimited risks on every aspect of the project including traffic and revenue, construction costs, extreme events of nature, environmental factors and more, it is not appropriate to have a cap on revenues. Our interests are aligned in maximizing ridership and therefore we are focused on having the lowest toll rate that is practical.

7. Why is a JPA needed? Can Caltrans relinquish the ROW directly to UBP?

Response: Based on current California law, Caltrans can relinquish an existing highway with its right-of-way to a local government. This has been accomplished in the past and

seems to be the easiest method for transferring to UBP. Since this section of SR37 traverses both Sonoma and Solano Counties, a Joint Powers Authority (JPA) of at least these two counties could accept relinquishment from Caltrans.

a. Has UBP spoken to Caltrans about sponsoring legislation to relinquish the facility directly to a private entity?

Response: UBP met with Caltrans District 4 leadership to discuss the envisioned legislative changes. At the District Director's request, a memorandum was prepared by UBP legal counsel summarizing legislative changes. This information was included in the UBP proposal to the SR37 Policy Committee. Based on conversations with elected officials in the project region, it was determined that elected representatives from the counties in which the project is located would be asked to introduce the necessary legislation. Even given the desire to use existing procedures, some legislative changes will be needed. The exact scope of the proposed legislation has not yet been finalized. If the will of Caltrans and the legislative is that the right-of-way be relinquished directly from Caltrans to UBP, UBP has no objection.

8. Is it envisioned that the JPA will include only Sonoma and Solano Counties? What about Marin and Napa?

Response: The JPA membership is up to the local counties. The UBP proposal recognizes that the geographic limits of the proposed site lie within Solano and Sonoma Counties and therefore focuses on the roles these counties have in addressing the implementation of UBP's proposal. It is understood that representatives of Marin and Napa Counties would be involved in assessing the needs outside the proposed project corridor. It is further understood that the JPA may have a broader view beyond the UBP proposal, which may involve Marin and Napa Counties and may want to address those issues separate and apart from the UBP project.

Schedule:

1. Where in the proposed schedule would Right of Way Clearance occur (Railroad agreement, Utility Relocation and Land Acquisitions)?

Response: During the environmental process, design of the expansion will be achieved in enough detail for addressing railroad considerations and agreements, utility needs and facility right-of-way.

2. The legislative and relinquishment process takes a considerable amount of time, which would be outside of the control of a future JPA. How does this process realistically fit into UBP project timeline and who bears the financial risk?

Response: The Legislative and relinquishment process preparation and details will run concurrent with environmental and design. The actual implementation will take place after environmental approval. This is currently shown to be 21 months in UBP's schedule.

UBP acknowledges the schedule implications of these activities and will adjust as needed. UBP will provide information to Caltrans to help in expediting the CTC

relinquishment process. UBP proposes to have some activities running in parallel. For example, once an LOI is executed, CEQA work will begin and does not require the legislative changes to be completed. UBP bears the financial risk of completing the legislative and relinquishment process.

3. Since UBP acknowledges in its proposal that the environmental hurdle must first be overcome, what assumptions has UBP made to anticipate an aggressive 2 year environmental clearance process?

   Response: For SR 37, we envision a four-step process, many of which will overlap. Step 1 will be UBP's initiating and funding of the CEQA review immediately upon receipt of the LOI. UBP has worked intensively with the Bay Institute and multiple environmental NGOs and agencies to define a project concept that enables significant environmental benefit, which in turn is expected to reduce the potential for substantial delay as a result of project refinements that might have otherwise occurred through consultation with these organizations during the CEQA process.

   Step 2 will consist of convening an interagency working group including all federal and state resource permitting agencies (USCG, USACE, USFWS, USEPA, SF BCDC, CDFW, and SFRWQCB) to define alternatives, key impacts, and mitigation strategies for use in both the CEQA and NEPA processes. UBP will work with the USACE and the USEPA to define the range of alternatives to meet the Clean Water Act Section 404(b)(1) alternatives review process. Step 2 will begin early in the CEQA process, helping to further expedite the environmental review process.

   Step 3 will consist of developing the NEPA documentation. This may be combined with the CEQA documentation if that proves to be advantageous to schedule.

   Step 4 will consist of developing permit applications for all federal and state resource agencies. This will be conducted during the CEQA and NEPA phases, such that there is a minimal "lag" of issuance of state and federal permits following formal completion of the CEQA and NEPA processes.

4. What appropriate incentives or commitments (e.g. Liquidated Damages) will UBP adopt to ensure delivery in a timely manner which would be in the best interest of the public?

   Response: We would provide, as we have in prior agreements, a commitment to complete the project within a certain period of time, which typically begins once the final permits have been received and the environmental process completed. If we do not complete the project in that period of time we would agree to some form of handback requirements. Once the construction begins, the construction contract will have schedule requirements with liquidated damage provisions in the event of a delay.

Proposal Evaluation and Approval Process

1. Does UBP intend to maintain the right to toll the facility in both directions in the future?

   Response: Yes, subject to the agreed toll cap. During meetings with various stakeholders the idea of tolling in both directions was brought up to UBP as a way to

accelerate the construction of the full new westbound bridges and highway instead of staging the Project. UBP has no objection to this idea, but we have currently taken the approach of tolling in one direction like the other bay area bridges and staging the Project to provide for the lowest toll.

2. Has UBP engaged in discussions with the Professional Engineers in California Government (PECG) and/or how does UBP intend to ensure qualified employees for project design and qualified contractors for construction?

   Response: UBP's focus, like with our other bridges, is to use qualified local labor, local materials and local contractors for construction. We would anticipate using the Professional Engineers in California Government (PECG) for quality assurance inspection during construction to complement our team. UBP will talk with PECG in the future to see if they are interested.

3. How will UBP ensure it will maintain the needs of the public service should the corridor Level of Service drop (e.g. clearing accidents and routine maintenance delays)? Would UBP preclude a JPA or Caltrans to implement transportation demand management such as ridesharing and transit alternatives (e.g. level of service, adding new lanes to minimize congestion etc.)?

   Response: UBP will agree to certain Level of Service requirements, which would be defined by Caltrans and the local community. It is in UBP's best interest to ensure the highest possible Level of Service and maximum mobility within the corridor for the greatest ridership. UBP would be willing to work with the JPA and Caltrans, should the Level of Service drop, to explore transportation demand management alternatives.

4. Would UBP seek compensation and/or approval rights for new or changed access along the corridor?

   Response: We assume that SR37 will remain a vital transportation corridor for the many important connections that are achieved for mobility. UBP's proposal maintains all existing access in the corridor. Our intention is to provide the flexibility for any future needed access to the facility to be considered on a case by case basis.

5. Based UBP legal research, can local agency or JPA sign Letter of Intent if they do not own the facility?

   Response: Yes. Based on the UBP's research and that of Hansen Bridgett, counsel to UBP on this project, there is nothing that prevents a local agency or JPA from executing a Letter of Intent if they do not own the facility. The goal of the LOI is to define the terms and conditions under which the project can move forward and provide UBP with the exclusivity that will enable UBP to expend significant resources in advance of a definitive transaction.

6. In the Key Steps From Concept through Construction Completion section of the unsolicited proposal, UBP expects the JPA to "transfer the process" and "final management" in Step 2, does this mean "transfer the assets"? Would UBP consider the "transfer of assets" only if they are successful in reaching financial close i.e. Step 4?

Response: In Step 2 the process for the transfer of the roadway is finalized. We would finalize the transfer upon financial close in Step 4. We have set aside the full amount of capital to fund the project, so financial close does not depend on debt financing.

Corridor Improvements

1. Does UBP specifically intend to meet Caltrans design standards and what level of Caltrans oversight is anticipated (i.e. during design and construction phases)?

   Response: Yes, UBP will meet Caltrans design standards. We would anticipate that Caltrans would be involved in oversight of the project construction. We would envision the level of oversight to include on-site visits from time to time and some information rights to the Engineering, Procurement and Construction (EPC) agreement schedule and progress.

2. Is the new flyover at SR 121/SR 37 included in the relinquished area? If not, the project schedule needs to consider Caltrans oversight.

   Response: Yes, the new flyover is included in the relinquishment area.

3. Will the flyover at SR121/SR 37 intersection and the Mare Island Interchange enhancements be considered for Phase 2 staging?

   Response: No, we consider improvements to the 121/37 intersection and to the Mare Island interchange to be part of Phase 1.

4. Proposal specifically states, "Concurrent with this initial construction will be reconfiguration of the intersection at 121 for free flowing traffic, and enhancements to Mare Island connection." What specific enhancements at Mare Island interchange are anticipated as part of the project and what are the specific proposed geometrics? Would UBP consider starting improvements on the east side of the corridor first?

   Response: The specific enhancements will include changes to the roadway to allow connectivity between the new structure and the existing four lane structure to enable seamless travel between the existing roadway and both new and old structures. Details of these interchange enhancements will be worked out closely with Solano County, and UBP will provide a rendering and more specifics once the details with Solano County and the community are finalized. UBP anticipates that the logical location for the pre-cast yard is on the East side of the project, so starting improvements to that side of the project first may make sense.

5. What are the metrics used to assess sea level rise in regards to when Phase 2 will be initiated for construction? How quickly will the existing facility be replaced if sea-level rise occurs earlier than the anticipated 2040 date?

   Response: We would work with the environmental community, UC Davis study contributors and the JPA to determine specific triggers for sea-level rise conditions which will be agreed to in UBP's final agreement.

6. What is the vision for the existing facility after Phase 2 is completed? Will the existing berm/levee be removed as part of the project or will it remain? How will the biological

and ecological improvements claimed by the project be achieved for the area if the existing 2-lane highway levee is to remain until 2040?

Response: UBP will continue coordinating with the Bay Institute and other non-governmental organizations (NGOs) and resource agencies to determine what changes would be required to the existing SR 37 berm to support ecological benefits. UBP anticipates that interim changes to drainage on the existing berm would be required to advance ecological improvements. UBP will continue to work with environmental organizations to determine how the "Environmental Trust Fund" contributions could best be applied to a coordinated ecological restoration program. The existing highway bermed areas will be adjusted as needed based on determinations made during the environmental process, such as placing culverts under the existing highway. This environmental process will address the best environmental benefits of the new and existing highway and how they work together.

7. What level of authority does UBP desire for the existing and adjacent facilities east and west of the project area (I.e. Segments A and C)? Has UBP taken into account the risk of sea-level rise to Segment A and the existing two lanes of Segment C? What would be UBP's expectation of improvements in these segments as a result of anticipated sea level rise?

   Response: UBP understands that the JPA's mandate may include a larger area than that addressed by the UBP proposal. UBP will work with the JPA to ensure that improvements proposed for other segments can benefit from the UBP's proposed project. It is UBP's expectation, and in everyone's best interest, for sea level rise to be addressed for segments A and C when conditions require it. It is clear that Segment B of State Road 37 needs capacity expansion from 121 to Mare Island. This existing two (2) lane section connects to four (4) lanes at each end of this nine (9) mile stretch of highway. This is the first immediate need. UBP will first fund the analysis of any studies and environmental process upon a Letter of Intent for this immediate need. This will mean no government money is needed to begin development of this needed expansion. As soon as this segment analysis is complete the information developed will be available for Segments A&C and UBP will provide this information and commit to fund the PID's for these adjacent segment evaluations. This will provide a cost effective and streamlined approach to success for SR37 without needing government funding.

8. The project proposes a class 1 bicycle facility which doesn't connect to anything at the west and east ends of the project, will UBP consider upgrading bike facilities to make a complete connection? Staging areas? Aside from the bike lanes proposed, what other modes of transportation are being conceived as part of this proposal, such as rail, bus transit, and pedestrian?

   Response: UBP understands that the JPA may address multi-phased improvements from various areas connecting to the project. UBP will ensure that logical connections are provided for and will consider staging areas for recreational cyclists.

Aside from bike lanes, we envision subsidized van pool travel as one component of the UBP proposal. The planned bike path would be wide enough with scenic viewing areas to accommodate pedestrian traffic. Rail is not anticipated.

9. Please provide cross section assumptions throughout the proposed facility for all phases of the project.

   Response: UBP will provide these during the design phases. Following the completion of an LOI, UBP will prepare more detailed design to help the Policy Committee, Caltrans and other agencies understand cross sections for all phases. We will examine various cross-section options, including a reversible three lane option.

10. How does the UBP proposal fit with the overall solution to solve the problems with the entire SR 37 alignment? Would UBP consider improving the entire SR 37 alignment as currently contemplated?

    Response: UBP understands that the JPA may address transportation issues for the entire SR 37 corridor. The UBP proposal addresses a specific segment; coordination with JPA plans for adjacent segments would be assumed. The UBP proposal would provide a needed improvement which would meet federal tests for logical termini and independent utility.

11. Would UBP install conduit for the corridor for public and private utilities including broadband and solar power. Who does UBP anticipate would be the lead agency in negotiating terms for utility easements and what would be the process?

    Response: UBP intends to install conduit as part of the construction of the roadway and elevated structure to accommodate certain public and private utilities, such as broadband, as we have in other projects. We are open to discussing and exploring what design components are necessary to accommodate solar power.

Financial

1. What is the traffic revenue being assumed by this proposal? What role will the public agencies play in this assumption?

   Response: We have engaged a traffic and revenue consultant to provide input into our assumptions. There is no requirement for public agency involvement.

2. What expectation would UBP have of state or local agencies in the event that Segment A or Segment C become inoperable or traffic lanes become restricted? In other words, what financial obligation does UBP foresee in the event of an emergency closure of the corridor outside of the tolled facility? Or in the event of a police/safety forced closure of the corridor (including routine construction maintenance for 1-lane closures)? Does UBP envision either Segment A or Segment C be precluded from having separate toll facilities?

   Response: For temporary closures on the A or C sections due either to business as usual maintenance or force majeure events, UBP would not seek any form of recompense.

We recognize the potential for tolling on the other sections and would like to have a right of first refusal to assist or some other involvement in the process to improve Sections A and C with options that can be addressed as part of our agreement. UBP would like to work collaboratively with the JPA as it studies solutions to other segments, helping the JPA understand the opportunities and constraints for tolling in the other segments and remaining open to future toll development collaborations on Segments A and C.

3. How does the toll collection work with FasTrak and a private entity? Who would be responsible for disputed charges? Does UBP envision contracting with CHP for traffic enforcement/toll violations? Will the traffic fines be applied toward the project or will it go to the State?

   Response: We envision collaborating with MTC to collect FasTrak tolls on our behalf. Typically those toll charges are transferred to UBP within 1-3 business days less a fee to MTC. UBP will be responsible for disputed charges and other collection risks. Yes, we envision contracting with CHP and we would envision some sharing mechanism between the project and the state for traffic fines.

4. The proposal indicates that toll rates would be set similar to Bay Area bridges, please clarify how the toll rates will be set and adjusted given the different rates collected from BATA and the Golden Gate District.

   Response: UBP would set toll rates similar to other Bay Area Bridges with discounts for electronic use, special rates for higher axle loads, etc. UBP would generally set tolls annually, subject to the agreed upon cap in our agreement. We envision creating a commuter club, unique seasonal discounts and other user friendly programs to attract people to use the facility.

5. Will the project include similar benefits/discounts on toll fees on Bay Area bridges and Express Lanes for carpool/van pools and alternative fueled vehicles?

   Response: We envision subsidized van pools, a commuter club program and other user incentives. The layout of vehicle lanes on the project does not accommodate express lanes. We do not plan on any discounts for alternative fueled vehicles.

6. What are the specific subsidy proposals for the disadvantage communities and how does that factor into UBP's assumptions?

   Response: We envision two programs which we have discussed in the past: 1) subsidized transponders for low income residents and 2) subsidized van pools.

7. How is toll leakage considered in UBP toll revenue assumptions?

   Response: UBP uses actual leakage metrics from our South Norfolk Jordan Bridge in Virginia to estimate toll leakage considerations.

8. How much of the toll revenue will be dedicated for environmental enhancements and what is the public selection process for these projects?

Response: The details of this plan will be worked out by continuing the development of this program with the Bay Institute to determine the timing, level of contribution and implementation of the environmental fund. In particular, we anticipate an up-front payment to "jump start" the environmental fund, in addition to toll sharing. We would anticipate a consortium of environmental groups focused on the San Pablo Bay area to determine how the environmental funds are used and it will be their sole discretion on use of those funds without UBP involvement.

9. Can UBP demonstrate the commitment of partners or the wider team's capability, skills necessary to deliver, operate and maintain the project over an indefinite term?

   Response: Yes. UBP was specifically created to permit the on-going commitment, capability and skills to deliver, operate and maintain the project for an indefinite term. This is exactly how we are delivering our other projects in Virginia and Indiana. These commitments are part of our LOI and Acquisition and Development Agreements.

10. What level of commitment (i.e. staff resources, expertise, time etc.) does UBP seek from the local/state agencies? For example, will UBP require access to the Solano-Napa Activity Based traffic model? Will UBP compensate staff for oversight and other administrative functions?

    Response: We anticipate that the involvement of the local and state agencies will be limited to the role of the JPA and Caltrans in facilitation for the project. UBP would like access to the Solano-Napa Activity Based traffic model to facilitate our modeling, but it is not required. We do not anticipate the need for significant administrative resources from local/state agencies.

11. Beyond toll revenue, would UBP consider seeking other sources of revenues or rights, such as; transportation development districts, special assessments, development fees and government contributions? With a goal that some alternative funding sources may lower user toll rates.

    Response: UBP will use its funding and does not need any other forms of state or local funding for the project. The project is fully funded now. This will also allow the project to be implemented in the quickest way possible.

12. Why is ownership of the corridor required? Is a P3 concession or a design-build procurement a viable option for UBP? For example, would a 30 year lease work? Has UBP contemplated a long-term lease instead of full relinquishment of the facility?

    Response: UBP's unique business model requires real property ownership rights associated with all projects UBP pursues. We would not consider a P3 concession, design build procurement or short (e.g. 30 year) lease. Structured appropriately, however, we would consider a very long term lease (e.g. 99 year lease).

13. Would UBP consider an upfront payment, on-going fee payments and/or possible mechanisms for sharing potential excess tolling revenue beyond a given threshold? If payments or revenue sharing is provided, how would that be split with the local/state agencies?

Response: UBP has already built into the plan a revenue sharing arrangement to fund the environmental fund on an on-going long term basis. We would not envision taking funds away from the environmental fund to pay any other entity. The interchange at Mare Island will be accomplished for the basic needs of the project while planning for future needs of Solano County. Since some of these needs will be determined by Solano in the future, UBP could provide a revenue sharing for Solano's use and implementation of final future access needs on SR37.

14. Would UBP accept unlimited liability under a change of law and/or extreme events, such as; force majeure earthquake? If so, can UBP demonstrate they have the resources and available insurance to reinstate the facility into operational service as soon as reasonably practicable?

    Response: Yes, UBP accepts unlimited liability. Yes, we will have insurance for many aspects of the project, including operationally after an extreme event. Between any insurance proceeds and the financial resources available to the project through its affiliates and investors, UBP would have the financial resources and the clear financial incentive to reinstate the facility into operational service as soon as possible.

15. Would UBP be eligible for emergency local/state/federal funding under extreme events?

    Response: UBP is not anticipating that we will be eligible.

16. Can UBP provide supporting financial and legal documentation to justify their ability to support the project and demonstrate they are free from material litigation?

    Response: Yes.

17. Can UBP demonstrate they have sufficient resources to fund (and do they appreciate the extent) of the development costs required to clear an environmental process in California?

    Response: UBP has recently completed two projects requiring environmental review and regulatory permitting. From meetings with Bay Area elected officials, environmental agencies and transportation agency representatives, we are aware of the complexities of California's environmental processes. UBP will use ICF to prepare environmental documentation and regulatory permits. ICF was brought onto the UBP team based on local knowledge and expertise in California transportation and water resources.

18. Would UBP consider termination provisions in the agreement should UBP not deliver the public service required or if it is in the best interest of the public?

    Response: We would put in place termination and hand-back provisions if we default on our requirements to operate the facility. We would not accept a "best interest" test for termination.

19. Would UBP accept the control of the tolling policy (i.e. rate setting) to remain with the local/state agencies?

    Response: The agreement with UBP will set a cap on the toll rate. Within that cap we must maintain control of our overall user fee program, and UBP would retain full toll

setting policy and program authority. We would envision putting in place a forum to communicate with the JPA and the community any changes to toll rates well in advance of implementation.

20. Would UBP consider engaging in a competitive procurement process for the development of this project?

    Response: We intend to utilize local labor and local materials for the construction of the project and anticipate that major contracts would go through some form of competitive procurement process with local contractors.

    Relative to the overall project, if the SR 37 Policy Committee chooses to move forward with a government funded approach to a PID or multi-year RFP, this will result in a lengthy process and our infrastructure funding will have to be used in other communities on other important projects. If this is the case, we will have no choice but to respectfully withdraw our proposal.

21. Does UBP intend to require non-compete conditions that would restrict or impede development of competing facilities or providing alternative modes of transportation that could undermine the project's traffic/revenue potential?

    Response: UBP would require some form of "zone of exclusion" around the project such that there would not be a free competing facility built immediately adjacent to the existing facility. UBP would require no limits on rail or mass transit.

22. Would UBP be 100% responsible for any project cost overruns regardless of the reason?

    Response: Yes, UBP would be 100% responsible for all costs.

23. What is UBP's proposed maintenance regime for the project? Will UBP replace the entire facility at the end of its useful life?

    Response: UBP will follow state and federal laws on inspections. We will have a full time team dedicated to the facility for operations and maintenance. In addition, UBP will make routine deposits into a Major Maintenance Reserve Account that can be tapped for large maintenance projects, which occur from time to time. UBP will design the facility for a 150 year usable life and would envision replacing the entire facility after that time.

Environmental

1. Who will be the CEQA/NEPA lead?

    Response: UBP envisions the JPA or a member agency of the JPA, such as Solano County, to serve as the CEQA Lead Agency. NEPA is anticipated to be triggered by the requirement for federal permits, therefore potential NEPA Lead Agency candidates would be the U.S. Coast Guard because a new bridge permit would be required or the U.S. Army Corps of Engineers because a Section 404 Individual Permit is anticipated. We have found on our other private bridges that the U.S. Coast Guard takes the lead even when other Federal Permits are needed. Development of federal and state wetland/waters and endangered species permit applications and early consultation with

permitting agencies will begin early in the environmental process. An agency working group including the permitting agencies is proposed which would include the key regulatory agencies. Based on the early consultation, the NEPA process and CEQA work flow will be determined. There may be separate CEQA and NEPA documents or a combined document depending on the best opportunities identified during the agency consultation process. This schedule overlap will ensure consistency and help expedite the overall schedule.

2. Has UBP considered starting the CEQA process prior to relinquishment of the facility? If so, Caltrans will be the lead in the environmental process.

   Response: Caltrans District 4 leadership suggested in early conversation with UBP team members that Caltrans would likely be responsible for the relinquishment process as an initial step in the relinquishment process. This was envisioned as submitting a Caltrans prepared CEQA Categorical Exemption or Negative Declaration to the California Transportation Commission which was described as the typical relinquishment process. UBP intends to prepare a separate CEQA document for the proposed SR 37 facility. While some of the information and analysis collected for the Caltrans CEQA document might be able to be used in the UBP CEQA document, they would be two separate processes. We are committed to pursuing CEQA prior to relinquishment including funding these efforts. We will provide the UBP team, our local legal counsel Hanson Bridgett, our environmental consultant ICF and whatever is needed. We will start immediately after signing an LOI.

3. Recognizing that CEQA (and potentially NEPA) environmental process has substantial risks given 3rd party approvals and additional requirements from several agencies (e.g.BCDC, Army Corp., USWF and NOAA), who will bear the financial risks?

   Response: UBP will fund and conduct the environmental review process. It is understood that "financial risks" in terms of delays or compensatory mitigation have the potential to occur. UBP assumes these risks and fully intends to collaborate with lead agencies to manage project delivery risks.

4. Will CEQA clearance be required before Caltrans can relinquish the corridor to the JPA, and then for the JPA to relinquish to UBP? What about before the LOI is executed? Would UBP consider completing environmental process prior to LOI is completed?

   Response: CEQA review is required for the Caltrans relinquishment action (see response to Question #2 above). This is assumed to be a Caltrans activity that is a common action taken to the California Transportation Commission. The transfer from the JPA to UBP would be addressed in the CEQA document prepared by UBP. Since this is a sizable investment of time and resources it is appropriate to execute an LOI prior to starting.

5. What commitments will UBP maintain to complete the environmental process? For example, would UBP accept making a "termination" payment if they "walk-away"? Would all the project information developed at that time transfer back to the local agencies?

Response: UBP's environmental consultant, ICF International (ICF), will maintain detailed project files and an indexed Administrative Record which would be available to the JPA, facilitating a smooth transfer of information should the environmental process be interrupted for any reason. We can share information in the public process for future needs.

6. Can UBP demonstrate they have the experience and experts to successfully complete an environmental process in California?

   Response: UBP has successfully obtained environmental approvals to construct major private bridges in Virginia and Indiana. Obtaining regulatory permits during the development-design-build phase was key to expedited delivery. For the SR 37 project, ICF International will be UBP's environmental consultant. UBP selected ICF because of their understanding of the complex ecological issues in the corridor, gained from their work on North Bay restoration projects, their national reputation for habitat conservation planning, extensive experience with the California Bay-Delta (California Water Fix) process; and ICF's extensive experience preparing CEQA/NEPA documentation and regulatory permitting applications for Bay Area and California transportation projects. The ICF team will be led by Mike Davis, an experienced CEQA/NEPA strategist with transportation experience in each of the counties and on many of the Bay Area's highest profile projects including Bay Bridge East Span, Doyle Drive/Presidio Parkway, Caldecott Tunnel and numerous other Caltrans projects. We will also use local consultant specialists for roadway design and general civil services familiar with Caltrans.

8. Would UBP be responsible for remediating any existing unknown contamination or unknown ground conditions or archaeological discoveries?

   Response: UBP understands that as ultimate owner-operator of the facility, we would take responsibility for these types of unanticipated discoveries. During the CEQA and NEPA processes, our team will work to identify such potential environmental issues, and we will define avoidance, minimization, and mitigation measures allowing us to effectively manage the possible unanticipated discovery of such resources. UBP will take responsibility.

9. The environmental approvals process for this project could be complex. Has UBP contemplated a scenario where the environmental review fails to yield the results expected by UBP within a reasonable timeframe?

   Response: UBP has participated in many meetings over the past 4 years regarding our innovative approach to delivering the SR 37 project. The complexity of the California environmental process has been discussed at many of these meetings. UBP is also fully aware of the federal environmental process. In response, UBP has adjusted the timeline of the project to be aggressive but achievable. We recognize the need for flexibility, but believe that the timeline can be achieved through an ongoing and extensive agency, NGO and community outreach process and by using an environmental consultant with extensive practical and policy experience who has been part of the UBP team developing the project since 2013. UBP will have a public process consistent with the

requirements of the environmental process. Additionally, UBP will continue to report and engage public comments at the regular SR37 Policy Committee meetings. The public process for the environmental alignment, permitting etc. will follow customary practice in California.

UBP is prepared and committed to do what it takes to achieve project success in getting the results to the finish line.