

CALIFORNIA TRANSPORTATION COMMISSION

DRAFT POLICY GUIDANCE APPROVAL OF PUBLIC PRIVATE PARTNERSHIP PROJECTS

1. Section 143 of the California Streets and Highways Code, as amended by Chapter 2 of the Statutes of 2009 (Senate Bill 4, Second Extraordinary Session), authorizes the California Department of Transportation and regional transportation agencies to enter into comprehensive development lease agreements with public or private entities for transportation projects, commonly known as public private partnership (P3) agreements. Section 143 further provides that P3 projects and associated lease agreements proposed by the Department or a regional transportation agency shall be submitted to the California Transportation Commission, and that the Commission shall approve the projects before the Department or regional transportation agency begins a public review process leading to the execution of the final lease agreement. For Department projects, the Commission shall also certify the Department's determination of the useful life of the project in establishing the lease agreement terms. Where the Department or a regional transportation agency uses a final evaluation of proposals based on qualifications and best value to select a contracting private entity, Section 143 mandates that the Commission adopt the criteria for making that evaluation.

The purpose of this guidance is to set forth the Commission's policy for carrying out its role in implementing P3 projects in order to assist and advise the Department, regional transportation entities, and private entities that may be contemplating the development of P3 agreements. This guidance does not address Department and regional transportation agency P3 project procedures that are not within the purview of the Commission. Consistent with statute, the Commission may make exceptions to this policy for a particular project where it finds it appropriate and in the public interest to do so.

2. Preliminary and Full Approval. The Commission will approve P3 projects in two stages, a preliminary approval and a full approval. ***The Department or regional transportation agency may engage in preliminary steps leading to the development of procurement documentation (request for proposals) for a P3 project prior to the Commission's preliminary project approval. However, the Commission expects that the Department or regional transportation agency will not issue the request for proposals prior to the preliminary approval. The Department or regional transportation agency may also select the preferred proposal and develop and negotiate the lease agreement associated with the project prior to the full approval. However, in accordance with Section 143(c)(5), the Department or regional transportation agency may not hold the public hearing or execute the final lease agreement prior to the Commission's full project approval.***

A *preliminary* approval will include and apply to:

- The description of the scope of the transportation project and its boundaries, including construction work and the performance of maintenance and operations.

- The criteria that the Department or regional agency will use for a final evaluation of proposals based on qualifications and best value
- For Department projects, a certification of the determination of the useful life of the project in establishing the lease agreement terms.
- The project financial plan, including the allocation of financial risk between public and private entities, as described in the project proposal report.

A full approval will include and apply to any updates or revisions to the above items. The Commission will grant both preliminary and full approvals to each P3 project through the adoption of a resolution at a regularly scheduled Commission meeting. Before granting either preliminary or full approval to a project, the Commission will conduct a public hearing as a scheduled meeting agenda item. The Commission will grant the preliminary or full approval with reference to a P3 project proposal report submitted by the Department or regional transportation agency.

3. Criteria for Commission Approval. The Commission will grant ***preliminary or full*** approval to a project if it finds all of the following:

- That the scope of the project as described in the project proposal report is clear and consistent with the requirements of statute.
- That the project is appropriate for development through a public private partnership, consistent with the P3 authorization in statute, and consistent with the public interest.
- That the Commission's approval of the project and its financial plan will not create a new commitment of state transportation revenues or create an undue risk to state transportation revenues committed to other projects. This does not preclude the commitment of state funds as a separate, even simultaneous, action. For example, the Commission could approve an amendment of the state transportation improvement program (STIP) to commit new funds to a P3 project, subject to the constraints of STIP funding.
- That the project, consistent with Section 143(h)(3), is primarily designed to achieve the following performance objectives, as evidenced in the project proposal report:
 - Improve mobility by improving travel times or reducing the number of vehicle hours of delay in the affected corridor.
 - Improve the operation or safety of the affected corridor.
 - Provide quantifiable air quality benefits for the region in which the project is located.
- That the project, consistent with Section 143(h)(4), addresses a known forecast demand, as determined by the Department or regional transportation agency and evidenced in the project proposal report.

Before granting full project approval, the Commission will review and may update its preliminary findings based on project changes made in the negotiated lease agreement and the full project proposal report.

4. Preliminary Project Proposal Report. The Commission will consider preliminary approval of a P3 project only when the Department or regional transportation agency has prepared and submitted a preliminary project proposal report to the Commission. ***At a minimum, the preliminary project proposal report should include:***
- The description of the scope of the transportation project and its boundaries, including construction work and the performance of maintenance and operations.
 - The basis of the Department or regional transportation agency for finding that it would be in the public interest to implement the project through a public private partnership agreement.
 - The project procurement documentation (e.g., request for proposal) that the Department or regional transportation agency may use in the solicitation or selection of the contracting entity or lessee. Where the Department or regional transportation agency will make a final evaluation of proposals based on qualifications and best value, the project proposal report will include the criteria for making that evaluation.
 - ***The proposed lease agreement associated with the project.***
 - ***For a Department project, the Department's determination of the useful life of the project in establishing the lease agreement terms, including the basis used in making that determination.***
 - ***The project financial plan, including the allocation of risk between public and private entities. The financial plan will include:***
 - ***forecasts of revenue from tolls and user fees, as determined by the Department or regional transportation agency;***
 - ***commitments of state or local revenues to the project (including capital, operating, maintenance, and debt service) or to any neighboring or ancillary projects necessary or desirable for full implementation of the project;***
 - ***the alternative source of project revenue should revenues from tolls and user fees fail to meet projections or otherwise be insufficient to meet project costs; and***
 - ***public financial responsibility for meeting project costs (including costs for operations, maintenance, and debt service) in case of default by the contracting entity or lessee.***
 - ***The Department or regional agency's estimate, with supporting documentation, of the extent to which the project will be designed to achieve each of the following performance objectives:***
 - ***improve mobility by improving travel times or reducing the number of vehicle hours of delay in the affected corridor;***
 - ***improve the operation or safety of the affected corridor; and***
 - ***provide quantifiable air quality benefits for the region in which the project is located.***

- ***The forecast travel demand, as determined by the Department or regional transportation agency, with supporting documentation.***

The Commission will place a project on its agenda for preliminary approval when the Commission office receives the preliminary project proposal report at least **60 days** prior to the meeting.

5. **Project Proposal Report for Full Project Approval.** The Commission will consider full approval of a P3 project only when the Department or regional transportation agency has negotiated and developed the terms of a draft lease agreement and has prepared and submitted a full project proposal report to the Commission. ***The Commission will grant full project approval if it finds that the negotiated lease agreement is consistent with the Commission’s preliminary project approval. Where there are inconsistencies or material changes, the Department or regional transportation agency should identify the changes, and the reasons for the changes, in its request for full project approval. When the Commission has granted full approval, the Department or agency may conduct its public hearing to receive comment on the lease agreement and execute the lease final agreement in accordance with Section 143(c)(5).*** The Commission will place a project on its agenda for full approval when the Commission office receives the project proposal report at least **30 days** prior to the meeting.

The project proposal report requesting P3 full project approval will include the following, updating the information in the preliminary project proposal report, as appropriate, for any changes in the proposed project or lease agreement:

- The description of the scope of the transportation project and its boundaries, including construction work and the performance of maintenance and operations.
- The basis of the Department or regional transportation agency for finding that the project would be in the public interest to implement the project through a public private partnership.
- The ***negotiated*** lease agreement associated with the project.
- For a Department project, the Department’s determination of the useful life of the project in establishing the lease agreement terms, including the basis used in making that determination.
- The project financial plan, including the allocation of risk between public and private entities. The financial plan will include:
 - forecasts of revenue from tolls and user fees, as determined by the Department or regional transportation agency;
 - commitments of state or local revenues to the project (including capital, operating, maintenance, and debt service) or to any neighboring or ancillary projects necessary or desirable for full implementation of the project;
 - the alternative source of project revenue should revenues from tolls and user fees fail to meet projections or otherwise be insufficient to meet project costs; and

- public financial responsibility for meeting project costs (including costs for operations, maintenance, and debt service) in case of default by the contracting entity or lessee.
 - The Department or regional agency's estimate, with supporting documentation, of the extent to which the project will be designed to achieve each of the following performance objectives:
 - improve mobility by improving travel times or reducing the number of vehicle hours of delay in the affected corridor;
 - improve the operation or safety of the affected corridor; and
 - provide quantifiable air quality benefits for the region in which the project is located.
 - The forecast travel demand, as determined by the Department or regional transportation agency, with supporting documentation.
6. Project Changes after Commission Approval. The lease agreement executed by the Department or regional transportation agency is to be consistent with the project approved by the Commission. ***Where the Department or regional transportation agency finds it appropriate to make a material change in the project prior to the execution of the lease agreement, the Department or regional transportation agency will submit to the Commission a supplement to the project proposal report, setting forth a description of the change and the reasons for it.*** The Commission will approve the supplement if it finds that the project remains consistent with the findings set forth in section 3 of this guidance. The Commission will place a proposed project supplement on its agenda when the Commission office receives the supplement report at least 30 days prior to the meeting.