

**The Transportation Corridor Agencies –  
Are They Taking Their Toll On Orange County?**



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## PREFACE

Because of the COVID-19 pandemic, the 2019-2020 Orange County Grand Jury suspended its investigative operations into this report for almost nine weeks. Unfortunately, this shut-down occurred at a critical point in the development of the report and its findings. As a result, because of the term limit for the empanelment of this Grand Jury, multiple planned interviews and independent research involving a few of the complainant financial and Board of Director (BoD) representative issues could not be accomplished. It is hoped that the limited findings of this Grand Jury report will convince the responsible county and state oversight agencies and elected representatives that the investigations and external audits of the Transportation Corridor Agencies (TCA) and its two Joint Powers Authorities (JPAs) requested by multiple federal and state elected representatives over the past 15 months to the governor and other state agencies (to include the latest one by California State Assemblywoman Cottie Petrie-Norris) will ultimately be acted upon in a manner befitting good governance and agency oversight rather than one of political expediency.

## SUMMARY

The Foothill/Eastern Transportation Corridor Agency (F/ETCA) and the San Joaquin Hills Transportation Corridor Agency (SJHTCA) are each a JPA [that ultimately merged their legislatively authorized administrative management functions into a single entity they named, the TCA], that operate “The Toll Roads,” a transportation corridor network comprised of SR-73, 133, 241, and 261 in eastern and southern Orange County. Established in 1986 during a period of austerity in state highway funding availability, these JPAs were seen as a methodology for financing and building multiple limited access highways to fulfill the need envisioned by the Southern California Association of Governments (SCAG) in the Master Plan of Arterial Highways (MPAH), the overall plan for future mobility within the county.<sup>1,2</sup> By all accounts, this has been very successful and Orange County travelers have enjoyed the option the toll roads provide for many years now.

As originally legislated, the JPAs were to build the roads, pay off the incurred debt, and go out of business.<sup>3</sup> While highway lane additions and interchanges were planned, their last major segment of highway was completed in 1998. Although initially envisioned to take 30 years to require its

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<sup>1</sup> CA State Legislature Chapter 708, Statutes 1984, Section 66484.3

<sup>2</sup> Orange County Transportation Authority: Guidance for Administration of the Orange County Master Plan for Arterial Highways, p. 2, August 14, 2017.

<sup>3</sup> Paragraph J in the “RECITALS” section of the “Joint Exercise of Powers Agreement Creating the San Joaquin Hills Transportation Corridor Agency” and paragraph H in the same section of the Joint Exercise of Powers Agreement Creating the Foothill/Eastern Transportation Corridor Agency” both dated January 30, 1986.

debts, because of the way the cumulative obligation of these JPAs has been restructured over the years, as things currently stand and if the debt is not restructured, adjusted, or expanded further, it will take 60 years (1993 to 2053) to fully repay the construction bonds and cost 3½ times the amount initially borrowed.<sup>4</sup>

Early in the JPA development process, a Major Thoroughfare and Bridge Fee Program<sup>5</sup> (more commonly called Development Impact Fees, or DIFs) was instituted to pay for the operation of each agency before the roads were built and any tolls collected. This program charges a fee for every new construction project (residence or commercial structure) in the county and in each participating city. These fees are tied to the debt for each JPA and because they are also tied to the building permit application process, are essentially hidden from the initial buyer of the home/commercial facility. Then, too, because these fees annually inflate on a set schedule, when the current debt is retired in 2053, if left in situ, the DIFs will have expanded to nearly 10.2 times the initially charged rate.<sup>6</sup>

The Grand Jury investigation discovered project policy, planning, budgeting, operating, and administrative matters are all handled by the TCA staff; administrative issues are brought to the attention of the BoD (comprised of one elected official from each represented city and the county board of supervisors) for authorization to spend budgeted or non-budgeted money and/or approve new projects. Uncertain or limited oversight is suspected. Important issues have their first reading in one of the eight<sup>7</sup> standing BoD committee meetings. The TCA staff provides its own summary of the committee proposal and findings to the Board at a general meeting without detailed meeting content discussion points or commentary. The Grand Jury found instances when the TCA staff acted on an issue, and, after the fact, requested approval for the completed action from the BoD.

While the charters for both JPA were modified in 2003 and the explicit termination clauses in the charter recitals were eliminated, referenced and included original 1985 appendices contain the same project limitations as the original legislation. Thus, given the duplicative activities and expenses of both JPAs and the fact that the missions leading to their founding have essentially been accomplished (especially the SJHTCA which finished building its single road in 1998 and

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<sup>4</sup> The first F/ETCA bonds were offered for sale on 20 July 1993 with maturation on July 1, 2023 and the currently structured bond debt sunsets on January 15, 2053. Note: At present, the bonds for the SJHTCA will be retired and agency operations should terminate on January 15, 2050.

<sup>5</sup> Prepared by the Environmental Management Agency, Transportation/Flood Control Management Office, July 1985, and appended as Exhibit C to the Joint Exercise of Powers Agreements for both the Foothill/Eastern Transportation Corridor Agency and the San Joaquin Hills Transportation Corridor Agency.

<sup>6</sup> Joint Exercise of Powers Agreement Creating the San Joaquin Hills Transportation Corridor Agency, Exhibit A dated July 1985, p. 2 and Table 1 (below).

<sup>7</sup> While both the Strategic Planning and External Affairs committees are not listed as a standing committee in the Board Committees section of the 2019 edition of the Reference Guide for Board Members and Alternates, a review of TCA records shows public meetings were conducted for each of these two committees in 2019 and 2020.

other than adding planned expansion lanes, has no other plans whatsoever to expand its route structure), the Grand Jury concludes that as envisioned in the founding legislation, both agencies should concentrate their activities on efficiently operating their network, expediting redeeming all bond debt, and complying with 2005 California Streets and Highways Code section 31245(a)<sup>8</sup> and terminate operations as prescribed in the following section, 31246, hopefully before the current January 15, 2050 and January 15, 2053 bond pay-off dates.

## **REASON FOR THE STUDY**

In response to three citizen complaints regarding the F/ETCA and SJHTA JPAs, referred to collectively as the TCA, alleging mismanagement of its funds, unethical political practices, and violation of its 1986 establishing legislation, the Grand Jury initiated an investigation of the aforementioned organizations to determine whether these complaints had merit.

## **METHOD OF STUDY**

1. Conduct research into the organization of TCA to include the legislation regarding its founding and subsequent charter modifications.
2. Conduct on-line research regarding news reports about TCA activities.
3. Interview complainants, knowledgeable experts, and current or former city and county officials.
4. Request information from the TCA on funding, bond debt, contracts, etc.
5. Interview certain elected officials regarding proposed legislation leveled at curtailing the activities of the TCA.
6. Interview selected TCA staff and board members, Orange County Transportation Authority (OCTA) staff, and Caltrans staff.
7. Examine election campaign funding statements of individuals involved with the TCA and compare them with lists of names of consulting agencies (and of their officers) for matching entries.
8. Examine lists of BoD of consulting firms to see if any pro-TCA elected officials are on those Boards to potentially influence the awarding of contracts.
9. Review financial activities of TCA to include bond debt financing and Major Thoroughfare and Bridge Fee Program (frequently cited in bond offering documentation as Development Incentive Fee Program)<sup>9</sup>
10. Review contracts let by the TCA.

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<sup>8</sup> While initially written for the El Dorado County Toll Authority, compliance with this regulation was extended to both OC JPAs.

<sup>9</sup> Example: SJHTCA Official Statement, \$1,078,629,411.05 bond offering dated March 1, 1993, pages 58–61.

11. Attend committee and Board of Director meetings and review agendas, minutes, and presentation materials of previously held meetings.

## **BACKGROUND AND FACTS**

### **Establishing Legislation and Associated Authorizations**

On January 30, 1986, in response to an apparent need identified thirty years previously for additional highways in central and southern Orange County and a lack of available funds in Sacramento to fulfill this need, per CA State Legislature Chapter 708, Statutes 1984, Section 66484.3, the county of Orange, and the cities of Costa Mesa, Irvine, Laguna Beach, Newport Beach, San Clemente, San Juan Capistrano, and Santa Ana entered into a “Joint Exercise of Powers Agreement creating the San Joaquin Hills Transportation Corridor Agency.” The stated purpose of the SJHTCA was to “plan for, acquire, construct, maintain, repair, manage, operate, and control facilities” of “environmentally-sensitive thoroughfares and bridges that conform to the technical standards of California Department of Transportation (Caltrans) and the Federal Highway Administration (FHWA).” It was also recognized by article “J” in the “RECITALS” of that founding document that “this Agreement shall terminate upon the effective date of the inclusion of the transportation facilities constructed pursuant to this agreement in the California State Highway System as defined and governed by Division 1 of the Streets and Highways Code.” This translates to mean that while the roadway and bridges so constructed are maintained by Caltrans, the TCA will terminate operations effective the date the bonds are fully repaid.

An exactly parallel model was used to establish the Foothill/Eastern Transportation Corridor Agency (F/ETCA) with representation from the county of Orange and the cities of Anaheim, Dana Point, Irvine, Lake Forest, Mission Viejo, Orange, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Santa Ana, Tustin, and Yorba Linda. In the F/ETCA’s charter document, RECITAL “H” is a word-for-word duplication of the article J statement in the SJHTCA charter.

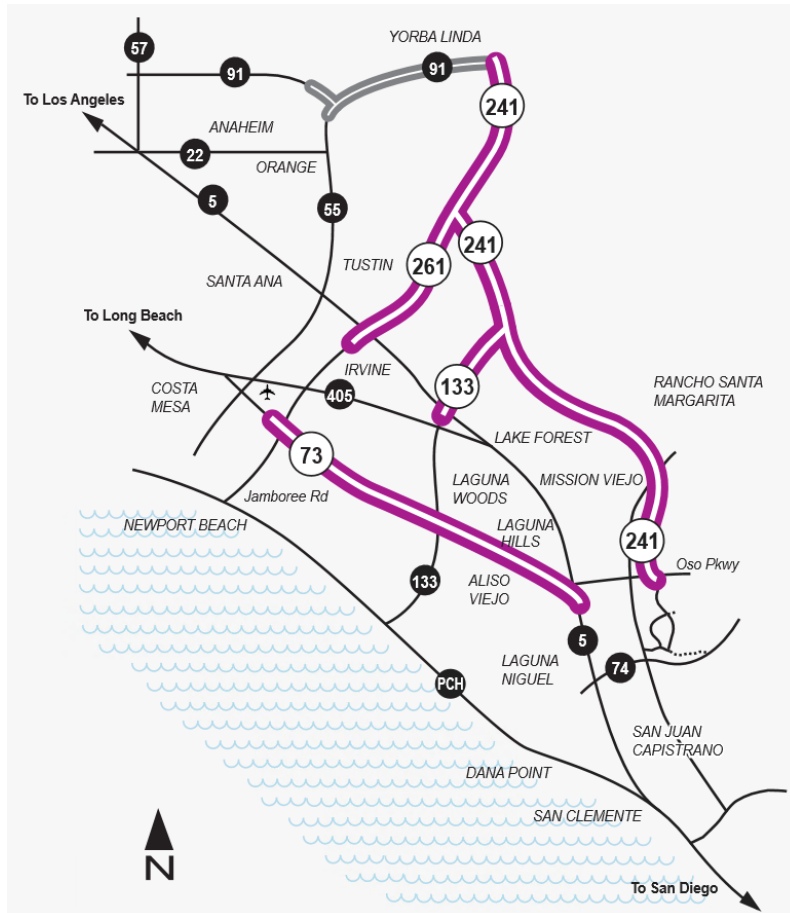
For reasons nebulously explained or addressed in the documentation, these agreements were amended and expanded on November 19, 2002<sup>10</sup> and the termination clause previously cited was dropped from each charter. However, the replacement agreement references the same July 1985 appendix, the Major Thoroughfare and Bridge Fee Program for SJHTCA and F/ETCA used in the founding legislation. This document very specifically defines the “Transportation Corridors” for each agency and limits all work by these agencies to that which was specified in the Master Plan of Arterial Highways (MPAH)<sup>11</sup> which defined the corridors as SR-73, 133, 241, and 261

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<sup>10</sup> Second Amended and Restated Joint Exercise of Powers Agreement Creating the Foothill/Eastern Transportation Corridor Agency

<sup>11</sup> OCTA: Guidance for Administration of the Orange County Master Plan for Arterial Highways, p. 2, August 14

(see Figure 1). Thus, any planning or collaboration with other agencies for work on routes other than these roads, for example some of the points raised in the “South County Traffic Relief Effort” (SCTRE) scoping study of November 2019 regarding work on the I-5 but excluding any connector plan between SR-241 and I-5, is beyond the scope of the charter for either JPA. This limitation to the scope of work permitted by these two agencies essentially implies that contrary to the rhetoric heard at many TCA Board meetings and praise for its past work, there remains a sunset to each JPA’s operations as there is just so much that can be done to improve or maintain four state roads.



Used with permission of the Transportation Corridor Agencies  
<https://thetollroads.com/tolls/map-rates>

Figure 1. The TCA Toll Roads

It should be noted that the MPAH was established “in 1956 to ensure that a regional arterial highway network would be planned, developed, and preserved, in order to supplement the County’s developing freeway system.”<sup>12</sup> As cited in the TCA legislative enabling documents,

<sup>12</sup> Ibid.



this master plan included the currently tolled roads operated by the TCA. Per an agreement with Orange County, in 1995, administrative responsibility for this plan was transferred to the OCTA.<sup>13</sup> Additionally, because of issues raised in discussions regarding the SCTRE study funded by the TCA but administered by Caltrans, in a not publicly released December 2019 letter from the TCA to the OCTA, the TCA reiterated its agreement that the OCTA is the superior planning agency for highway planning in Orange County.

Since the work permitted to be accomplished by the two JPAs has been clearly defined by the enabling legislation and with the exception of some minor upgrades, the SJHTCA completed its work on SR-73 back in 1998. Since the two widening projects completed in 2009 adding a total of 5.7 lane-miles in each direction, with the exception of two studies currently in progress, the SJHTCA has developed no additional plans whatsoever for additional lane miles or additions to their network nor the need for additional interchanges or other significant actions.<sup>14</sup> The Grand Jury was unable to discover why this JPA has not instituted plans to pay off its debt and sunset its operations per the founding document recital and the subsequent restatement of its charter, nor any logical future plans or goals consistent with the JPA's original charter.

Then, too, the Grand Jury was repeatedly referred to the sections of the CA State Streets and Highways code that were enacted for a parallel JPA in El Dorado County stating that the TCA is governed by the same legislation. Under 2005 CA Streets and Highways Code section 31246, as of the date that the bond debt is fully repaid and the highways each JPA constructed become the responsibility of Caltrans, "... the existence of the authority shall thereupon automatically terminate ...." The Grand Jury got the very distinct impression that TCA staff and board members were more concerned with day-to-day activities and the preservation of the operation of the TCA, and no one recognized that by law, each agency has a limited, finite mission with what is supposed to be a limited life span.

While the Grand Jury complaint of fiscal mismanagement could not be conclusively proven during this investigation, it is readily apparent that while complying with the state statutes, both JPAs have gone into a "self-perpetuation" mode (i.e. the Grand Jury was repeatedly left with the impression that the question, "What new project or network expansion can we find that will add a new goal for the agency?" was an underlying activity for TCA management and Board members). Projects are added, new ways to expand their authority are being sought, and some elected officials are profiting from their association with the agencies by attending an unusually large number of meetings. All of these activities come at a cost to both the residents of the county and the users of the roads whose toll and DIF payments not only defray highway maintenance costs and repayment of the bond debt, but also fund the plans, studies, advertising,

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<sup>13</sup> Ibid, p. 2, footnote 3

<sup>14</sup> Op cit Reference Guide for BoD Members, Capital Improvement Projects tab, p. 16.

and (as compared to Caltrans and OCTA) high senior management costs associated with operating the TCA.

The Grand Jury learned that while they are serving the community through membership on a TCA board and its multiple committees, that this activity is truly a “cash cow” for some. The Grand Jury heard the comment, “Three or four [TCA] meetings a month ... that’s a car payment.” To confirm this allegation, the Grand Jury reviewed relevant records and found that while most members earn less than \$2,000 per year for their service on the boards of these two JPAs, a few were paid significantly more than that amount.

While the SJHTCA has clearly completed the singular highway under its control, based upon its founding documents, the F/ETCA still has two additional issues that it needs to complete before it winds up in a similar position. These two projects are the northern SR-241 terminus with SR-91 and the connection of SR-241 to the I-5 in the south. While the original TCA Fiscal Year Capital Improvement Plan projected that the “241/91 Express Connector” (F/ETCA Project No. 3) should be completed in FY 2023 at a cost of \$183.1M, because of the issue of excessive traffic flow out of Orange County into the already congested SR-91, a late 2019 agreement was entered into between OCTA and the Riverside County Transportation Commission (RCTC) which will delay this project until the HOV lane connection between SR-91 and I-15 has been completed. Because of the delay, the Grand Jury learned it is likely that this additional work will probably end up costing between \$200M and \$220M with a probable completion date around 2025 or later.

After more than eight years of study and planning, the connection of SR-241 to I-5 received a major setback in 2016 when multiple legal arguments were raised and the proposed “Green Route” along the border of Camp Pendleton was cancelled with an accompanying over \$253M legal fee and associated settlement cost write-offs. Since then, a new SCTRE study was developed in an effort to find a different route for this project. It is interesting to note that while the previously referenced 1995 agreement suggests that as the senior planning authority, OCTA would logically be responsible for future highway planning in the county, with virtually no OCTA coordination or input, the TCA entered into an agreement with Caltrans wherein the TCA funded the SCTRE study, but all public documentation, meetings, and associated published literature would be handled by Caltrans.

After 94-days of public comment ending on Feb 10, 2020, on March 12, 2020, the results of the SCTRE study were presented to the BoD of the F/ETCA and they voted to select option route 22.<sup>15</sup> This routing did not require the TCA to build any new toll roads as the routing relied entirely on existing or proposed expanded county arterial roads. The only F/ETCA action

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<sup>15</sup> TCA press release, March 12, 2020: “TCA Ends Effort to Extend 241 Toll Road, Unanimously Supports Three-Project Solution to South Orange County Traffic Relief”

required was an addition to the already in progress \$39.6M Oso Parkway Bridge Project<sup>16</sup> that provides the southern termination of SR-241 into Los Patrones Parkway with a March 12, 2020 BoD meeting comment that it would be similar to the way SR-133 terminates into Jamboree Road. Based upon a motion proposed by Director Kathy Ward from San Clemente, there was considerable discussion at that meeting as to the wording of the final record regarding this concluding SR-241 to I-5 link. Ultimately, it was decided that only the press release statement to the public would include this decisive, termination of SR-241 extension comment. In a unanimous vote, all of the Board members agreed that the selection of option 22 essentially ended the TCA desire to directly connect SR-241 to the I-5 with a toll road.

## **The Hidden Tax**

As defined by the enabling legislation creators, initial funding for each newly created JPA was supplied through an assessment on all new construction in each of the associated cities and unincorporated county areas. While the founding documents refer to these assessments as the Major Thoroughfare and Bridge Fee Program (MTBFP),<sup>17</sup> bond offerings and other TCA publications consistently refer to these fees and the revenue generated by them as “Development Impact Fees” (DIFs). This same informal DIFs euphemism for the MTBFP is used in the TCA reference guide manual given to every member and alternate of each JPA Board. Subsequent TCA documentation and public educational pieces appear to use these two phrases interchangeably.

The MTBFP for each agency was combined into a single document on April 10, 2003. Further, it is stated in the executive summary of that document that, “Future development within the benefit areas is expected to account for approximately 48% of the total cost of the SJHTCA and F/ETCA.” The reality is that presently, these fees account for about 9% of the income for these agencies.<sup>18</sup> While these fees were essential to pay for the establishment funding of the JPAs before the roads were built and tolls could be collected to repay the debts incurred and handle operating costs, the expected revenue never materialized and an additional 30-years has been added to the initially envisioned debt repayment schedule.

It seems that virtually every speech made by TCA BoD members who advocate for the TCA and many advertising pieces produced by the TCA tout the fact that “no tax money” has been used to construct the four highways in their system. This statement, while technically correct, is really a

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<sup>16</sup> F/ETCA Fiscal year Capital Improvement Plan, Project No. 2.

<sup>17</sup> Prepared by the Environmental Management Agency, Transportation/Flood Control Management Office, July 1985, and appended as Exhibit C to the Joint Exercise of Powers Agreements for both the Foothill/Eastern Transportation Corridor Agency and the San Joaquin Hills Transportation Corridor Agency.

<sup>18</sup> This current actual percentage was derived from Grand Jury analyses of income statements and audit reviews. Also, a quote from Major Thoroughfare and Bridge Fee Program for SJHTCA and F/ETCA executive summary, p. 1 (prepared by Environmental Management Agency, Transportation/Flood Control Program Office July 1985 and revised by TCA September 1988, January 1991, and June 1997).

misleading issue of semantics. Courts have consistently held that governmental fees are not taxes and taxes are not fees, yet in the manner that voters absolutely have a say over the amount of money being charged them in the form of taxes, no citizen in Orange County currently has a say in the amount of money being charged them in the form of the DIFs nor without action by the state legislature, what date the payment of these fees will end. Obviously, they will end when each agency sunsets its operations.

It should be noted that two members of the state assembly have recognized this issue and have attempted to remedy the situation by curtailing the payment of these DIFs and accelerating the phase-out of the operation of the TCA (as in almost every respect, its activities have become a parallel to those of the OCTA and Caltrans). Among other comments, the hyperbole and rhetoric against these two pieces of legislation claimed their passage would immediately close the TCA. The absurdity and legal impossibility of this claim was deliberately overlooked/avoided by the opposition to the bills. Introduced in 2017, AB382 was passed by the Assembly, but had not been voted out of the Senate committee when the legislative session ended. On March 23, 2019, AB1273, a similar piece of legislation was introduced and for multiple political reasons, ultimately placed on hiatus in the Assembly. The Grand Jury learned that supporters of both of these pieces of legislation believe that *in their opinion*, private entities and elected officials who financially benefit from the existence of the TCA lobbied quite extensively in Sacramento to block this legislation that would ultimately benefit the residents of Orange County. These statements were backed with substantive documentation obtained by and provided to the Grand Jury.<sup>19</sup> In simple terms, analysis of these two bills shows that their end effect would have curtailed future TCA highway planning and mission expansion efforts and forced both JPAs to concentrate on streamlining their operations and accelerating repayment of their debts (with a net reduction in interest payments and overall operating costs) thus hastening their ultimate closure (currently scheduled for 30 and 33 years from now when their bonds are fully amortized). Ultimately, acceding to political pressure, in February, 2020, AB1273 was withdrawn.

By the standards of 1986 when the DIFs were established, they were reasonably low (i.e. in SJHTCA it was \$1,305 for a single family residence, \$760 per unit for a multi-family residence, and \$1.75/square foot for non-residential property). Because the rate charged was initially tied to the California Construction Cost Index and fluctuated widely over the years<sup>20</sup>, in July 1997, it was voted that the annual rate increase for the F/ETCA would be set at 2.206% and for the

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<sup>19</sup> Example: As a matter of public record, with no public discussion nor open vote by the city council, on April 2, 2019, Mission Viejo Mayor Greg Rath signed a letter on city letterhead stating that “the City of Mission Viejo strongly opposes AB 1273” and with multiple exaggerations of fact and some questionable direct benefits to Mission Viejo, praises the TCA and sent that letter to Cecilia Aguiar-Curry, Chair of the Assembly Committee on Local Government with copies to both TCA Boards of Directors, Darrell Johnson, CEO of the OCTA, and the following CA state senators and legislators: Phillip Chen, Sharon Quirk-Silva, Steven Choi, Tom Daly, Tyler Diep, Bill Brough, Cottie Petrie-Norris, Ling Chang, Bob Archuleta, Tom Umberg, Pat Bates, and John Moorlach.

<sup>20</sup> TCA Reference Guide for Board Members and Alternates, 2019, DIF Program, p. 1.

SJHTCA at 2.667%. Thus, by June 1997, this assessment had inflated to \$3,311 (SJHTCA) and \$3,673 (F/ETCA) per single family residence and \$4.20 and \$5.10 per square foot respectively for commercial property.<sup>21</sup> Today's assessment for fiscal year July 2019 – June 2020 is \$5,740 or \$4,448 per multi-family unit and \$7.69 or \$8.24 per square foot for commercial properties. As a result of annual assessed percentage fee increases agreed upon by the elected officials from each city who years ago sat on the respective boards of directors for each JPA, Table 1 provides a projected view of what these fees will cost Orange County residents in the future.

To illustrate just how much money is being paid to the TCA in this program, between FY 2010 and Q1 of FY 2020, member cities in the F/ETCA area paid \$168,438,000 and in the SJHTCA area paid \$52,934,000 with Irvine, Lake Forest, Tustin, and Yorba Linda bearing the largest share of this burden. As of June 30, 2019, the affected cities and county unincorporated areas have paid the TCA approximately \$536.7M along with \$166.9M in “fee credits” (right of way, grading, and other improvements “provided” in lieu of fee payments by developers).<sup>22</sup>

It is important to note that unless the JPA charters are amended by the state legislature (as was intended by the failed legislation AB 382 and AB 1273), the collection of these fees only terminates when the TCA has fully repaid its bond debt and ceases to exist (presently scheduled for January 15, 2053 for the F/ETCA and January 15, 2050 for the SJHTCA<sup>23</sup>). If the TCA creates new projects requiring additional funding and additional bond debt extending the current termination date, Orange County residents and business developers will continue to pay these fees at the ever inflating rate seemingly in perpetuity. It is interesting to note that if a homeowner expands the size of his existing house with add-on rooms, no additional fee is due; but if a non-residential property owner expands the size of his building, a DIF must be paid to the TCA for the additional square footage added to the building. Exempted from this program are churches, public schools, residential parking garages, and government-owned facilities, provided those public buildings do not generate revenue for the governmental entity nor are leased out.<sup>24</sup>

On February 28, 2020, the Los Angeles Times wrote an editorial decrying the excessive cost to all Californians of the pre-construction fees charged by many municipalities. That article claimed that a developer or builder in Irvine would have to pay DIFs of \$22,000 for a condominium or \$16,000 for every new home built. In this Irvine example, for a single family

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<sup>21</sup> Major Thoroughfare and Bridge Fee Program for San Joaquin Hills Transportation Corridor and Foothill/Easter\n Transportation Corridors dated July 1988 and revised June 1997), page 2

<sup>22</sup> P. 41, Foothill/Eastern Transportation Corridor Agency Toll Road Refunding Revenue Bonds Series 2019A bond offering statement.

<sup>23</sup> Op. cit., offering document cover page ii; San Joaquin Hills Transportation Corridor Agency Senior Lien Toll Road Refunding Revenue Bonds Series 2014A, offering document cover page ii.

<sup>24</sup> Op. cit. BoD Manual, DIF Program, p. 3.

home, per Table 1, under current law, 37% of that Los Angeles Times claimed fee total being collected will be paid directly to the TCA.<sup>25</sup>

It is also interesting to note that one solution to the homeless issue in Orange County is being addressed with the construction of new homes and apartments with low rents or acquisition costs to the occupants specifically to ease this problem (referred to as Permanent Supportive Housing). However, without state legislative action, even these new construction residences will be subject to payment of DIFs to the TCA (with limited probability that the residents will make use of the toll roads) adding to the overall cost of these projects. Then too, this future fee payment burden to the county will not be insignificant since SCAG has recommended that thousands of homes be built over the next decade partially to address both the homeless issue and expected population increases.<sup>26</sup> Thus, because of the 34-year old MTBFP legislation, it appears likely that hundreds of thousands of PSH dollars appropriated to benefit less fortunate citizens will be paid directly to the coffers of the TCA.

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<sup>25</sup> See Appendix 1 for a more complete table

<sup>26</sup> “Coastal Counties Could See a Lot More Growth Under a New State Plan,” Zoie Matthew, LA Magazine, Nov 12, 2019.

Table 1. Development Impact Fees cost to Orange County

		2019		Projected 2050 and 2052 based on annual increase listed	
		SJHTCA	F/ETCA	SJHTCA 2.667%	F/ETCA 2.206%
Single Family (per unit)	Zone A	\$5,740	\$5,925	\$12,757	\$11,911
	Zone B	\$4,448	\$4,448	\$9,886	\$10,326
Multi-Family (per unit)	Zone A	\$3,343	\$3,460	\$7,430	\$6,955
	Zone B	\$2,595	\$2,595	\$5,767	\$6,025
Non-Residential (per sq ft)	Zone A	\$7.69	\$7.69	\$17.09	\$17.85
	Zone B	\$5.68	\$5.68	\$12.62	\$13.19

Notes: Residential fees are levied on a per unit basis.  
 Non-residential fees are based on a per square foot basis.  
 Rates increase on July 1 of each year.

## Bond Debt

Beginning in 1993 and 1995, municipal bonds were floated raising \$2.419B<sup>27</sup> to construct highways for each JPA. The repayment of these bonds had been structured as interest only for the first few years with principal repayment to be added after the revenue stream had been established from the tolls collected by users of the highways. The history of the bond debt is unique in that each of the two times the TCA has been required to start making substantial repayments to principal, they have restructured the debt issuing new bonds and extending the final repayment deadline. The replacement bond documents suggest that the new bonds are taking advantage of lower interest rates. Grand Jury analysis of the financial documents from that period suggest that the refinancing was essential for the TCA to remain solvent and the fact that bond ratings of the agencies have gradually increased over the years substantiate this view. The Grand Jury noted the claim that refinancing at lower interest rates may have extended the pay-off date and supposedly saved millions of dollars in interest payments, but the reality is the action drove up the overall cost of repaying the debts. Thus, the repayment period has been extended and the total amount of interest to be paid has substantially increased (to over 3.4 times the borrowed amount). The original \$3.264B<sup>28</sup> in costs that was supposed to be completely

<sup>27</sup> Total of F/ETCA Series 1993 and Series 1995A bonds and SJHTCA Series 1993 bonds.

<sup>28</sup> Per Center for Innovative Finance Support

[https://www.fhwa.dot.gov/ipd/project\\_profiles/ca/foothill\\_eastern\\_tollraod.aspx](https://www.fhwa.dot.gov/ipd/project_profiles/ca/foothill_eastern_tollraod.aspx)

repaid by January 2, 2035 will now not be repaid (for the F/ETCA) until January 15, 2053 (and January 15, 2050 for the SJHTCA) at a cost of over \$11B.<sup>29</sup>

What this means is that every time the debt of each JPA is restructured to a later pay-off date, the TCA extends its life which is in direct contradiction to the founding principles cited when the agency was established in 1986.

The Grand Jury learned that the TCA will be looking to refinance portions of their debt in 2023 and 2025. Coincidentally, these dates match the time that the TCA will be required to begin to make substantive payments on the debt principal. Then too, such an action would have the consequences of:

- Possible extension of the life of the TCA beyond its current January 15, 2053 sunset
- Increase the amount of interest to be paid on the basic \$3.264B in debt (the current principal and interest total to be repaid is \$11.258B)<sup>30</sup>
- Extending the number of years residents and developers in member cities will have to pay development impact fees
- Increase the likelihood of highway planning conflict with the OCTA, the agency primarily tasked with transportation planning in the county

In an analysis of the current SJHTCA bond debt repayment schedule, the Grand Jury found that all the bond debt could be conservatively retired by June 30, 2036 and that this could be accomplished even with stopping the collection of tolls on SR-73 after September 30, 2032. With a cash and investment balance of approximately \$694,954,000 as of June 30, 2019 this Grand Jury proposed conservative payoff schedule could be implemented as early as June 30, 2020 if the Board would commit to doing so. The Grand Jury calculated a potential payoff schedule with final payoff dates summarized in Table 2.<sup>31</sup>

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<sup>29</sup> Current documents state that this amount is \$11.258B but the Grand Jury has observed that this number is fluid with each refinancing of portions of the debt.

<sup>30</sup> To put these numbers in perspective, if carried to term, most homeowners mortgages result in a payment of around twice the amount of funds initially borrowed. In this case, the TCA will pay back more than 3.4 times the amount of money borrowed to close out the debt; total debt amount cited was provided by TCA.

<sup>31</sup> See Appendix 2.



Table 2. Potential SJHTCA bond payoff dates

<b>Bond</b>	<b>Payoff Date</b>
Series 1997A	June 30, 2029
Series 2014 Senior Lien	June 30, 2031
Series 2014 Junior Lien	June 30, 2027
SERIES 1997A Capital Appreciation	June 30, 2036

## Decision Making at TCA

Each JPA, the F/ETCA and the SJHTCA, has a BoD which is ultimately responsible for the operation of the agency while day-to-day operations are handled by TCA employed staff. BoD membership is comprised of one elected city council person from each of the JPA charter cities and the Orange County Board of Supervisors from districts containing the toll roads. Board members are chosen by the city mayor and voted on by the city council. Some of these individuals sit on both boards since the cities of Irvine, San Clemente, San Juan Capistrano, and Santa Ana are members of both JPAs. Board members may also sit on one or more of the several committees, which are:

- Joint Capital Program & Projects
- Joint Communication & Marketing
- Joint Environment
- Joint Finance & Investment
- Operations & Finance (one for each entity)
- Joint Toll Operations
- Strategic Planning
- External Affairs

Full board meetings are held monthly with an occasional dark month. Committee meetings are held on an irregular schedule. The two full boards and committees typically meet together, since many items affect both JPAs and some members are on both boards. All full board and committee meetings are open to the public with their date, time and location advertised on the Toll Roads website as specified by the Brown Act.<sup>32</sup> There are also ad hoc meetings where special or sensitive topics are discussed, and these are not public if permitted by the Brown Act.

Much of the actual work is, and many of the decisions are, made at committee level. This is where detailed discussions are held based on input from board members and primarily, TCA

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<sup>32</sup> The Brown Act: CA Gov. Code §54954(a); requires location, time, and date, "... for which an agenda is posted at least 72 hours in advance of the meeting [and for standing committees or advisory committees] pursuant to subdivision (a) of Section 54954.2 shall be considered for purposes of this chapter as regular meetings of the legislative body."

administrative staff. Results are then taken to the entire board for discussion and a vote. These items may be on the meeting “consent calendar” where a vote is taken with no discussion. In fact, the consent calendar items are often voted on as a group. Board meetings may be short, so it is unclear how much oversight the full BoD is actually exercising. However, items may be removed from the consent calendar if a board member desires further discussion during the board meeting.

The TCA website contains upcoming BoD and committee meeting agendas, a video of past BoD meetings, and BoD meeting “packets.” The packets are published after each BoD meeting and include the most recent BoD meeting agenda, last month’s BoD meeting minutes, the minutes of each committee meeting held between the previous month’s and most recent BoD meetings, and a summary of presentations. However, not all presentations are included in the packets. Sometimes just a summary is included so the public or the Board may not have access to all information presented at meetings. Since the COVID-19 pandemic has required virtual meetings, recent TCA committee meetings have been recorded and are now available on the website. This enables a full record of everything that was presented. The Grand Jury believes it would benefit the public if this practice continues even after in person meetings are held again.

The Grand Jury found that the committee meeting reports are reasonably detailed regarding the TCA staff member positions but with the exception of vote results are devoid of any elected official comments or discussion points. The Grand Jury also learned that much of the material presented in the committee meetings is produced by the TCA staff since they are responsible for daily operations and have the time and access to the required information. This has resulted in some issues being decided without adequate board input or knowledge. It is further understood that some decisions are voted on and passed simply based upon TCA staff recommendations without full understanding by the BoD because of the significant time and effort that would be required by the BoD membership to be fully informed of TCA operations. Additionally, the Grand Jury learned of a recent decision requiring Board approval that was made and implemented by the TCA staff and then brought to a general BoD meeting after the fact for a vote. In another instance, after 17 years of silence with implicit apparent compliance over that period, the TCA administrative staff took unilateral action in a June 7, 2018 meeting with the OCTA to seek assistance to modify or void a portion of an April 5, 2001 MOU between SCAG and the F/ETCA regarding a Traffic Control Measure with compliance required by 2021 it has not met without notifying the F/ETCA BoD of this action. The Grand Jury believes that this action is another example of a TCA staff action without proper authorization from the elected officials who are supposed to be overseeing its activities.

In a recent announcement, per an April 6, 2020 article in the Orange County Register, the CEO of the agency for the past six years announced his retirement and subsequently an interim CEO has been named. It is hoped that the interim CEO and any permanent replacement will abide by

the intent of the founding legislation of these agencies and implement changes that facilitate the sunset of these JPAs.

## **Requests for Outside Audit of the TCA**

On March 12, 2019, Congressman Mike Levin wrote to Gov. Gavin Newsom regarding his concerns over misuse of government funds by the TCA and requested the governor to investigate these potential issues. On May 3, 2019, Rep. Levin wrote a similar letter to CA State Controller Betty Yee requesting an audit of the TCA. In addition, on April 23, 2019, Rep. Harley Rouda and Rep. Levin wrote a joint letter to Caltrans seeking a similar investigation of TCA activities. While follow-up and comment on these actions are outside the purview of the Orange County Grand Jury, beyond the Caltrans response claiming that any audit of TCA activities was beyond the scope of their responsibilities, there appears to have been no substantive response to any of these requests.

The latest formal request for a state agency audit of the TCA appears to be the January 13, 2020 letter by Assemblywoman Cottie Petrie-Norris to Rudy Salas, the chairman of the Joint Legislative Audit Committee pointing to the same alleged financial abuses previously cited by Rep. Levin. To date, the Grand Jury has no information regarding any follow-up to this request.

## **Projects**

The TCA has successfully financed, planned and constructed 51 miles of toll roads consisting of SJHTCA's SR-73 and F/ETCA SR-133, SR-241 and SR-261 in Orange County as part of the state highway system. Although future improvements to SR-73, SR-133 and SR-261 are envisioned, these roads are essentially complete. Three significant projects are currently in various stages of planning or construction by the F/ETCA on SR-241 as described below. These projects are envisioned as part of the mission to complete SR-241 from SR-91 to I-5, originally planned decades ago as part of the "major thoroughfares and bridges" described in the legislation creating the JPAs. Traffic patterns have evolved over the years and are sometimes different than what was envisioned during original planning of the toll roads decades ago. This must be taken into account in current and future planning and construction.

Significant current and future TCA projects are summarized in the "Fiscal Year 2020 Capital Improvement Plan" available on their website.<sup>33</sup> They are listed here and some of the projects are described in more detail below. Some of these projects may be considered beyond the original scope of the TCA since they are enhancements, maintenance or otherwise not directly related to the toll roads.

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<sup>33</sup> [https://thetollroads.com/sites/default/files/Capital-Improvement-Plan\\_FINAL.pdf](https://thetollroads.com/sites/default/files/Capital-Improvement-Plan_FINAL.pdf)

1. **Capital Projects Under Construction**
  - a. F/ETCA: Los Patrones Parkway
  - b. F/ETCA: Oso Parkway Bridge
  - c. F/ETCA & SJHTCA: Signage Enhancements
2. **Current Capital Projects (Completion dates by 2025)**
  - a. F/ETCA: 241/91 Express Connector
  - b. F/ETCA: NB SR-241 at Windy Ridge Channelizers Study
  - c. F/ETCA: NB SR-241 Loma Lane Extension (*Potential TCM Substitution Project*)
  - d. F/ETCA & SJHTCA: SR-241 Portola Parkway Bikeway Gap Closure (*Potential TCM Substitution Project*)
  - e. SJHTCA: Catalina View Traffic Improvements
3. **Future Capital Projects- Interchanges and Other Operational Improvements (Completion dates post-2025)**
  - a. F/ETCA: South County Traffic Relief Effort
  - b. F/ETCA: SR-241/Jeffrey Road Interchange (Study Only)
  - c. F/ETCA: SR-133/Great Park Interchange (Coordination Only)
  - d. F/ETCA & SJHTCA: Toll Plaza Facility Improvements
  - e. SJHTCA: SR-73 Improvements, MacArthur to I-405 (Coordination Only)
  - f. SJHTCA: Glenwood Interchange (Phases 2 & 3)
4. **Future Capital Projects- Ultimate Widening (Completion dates post-2025)**
  - a. F/ETCA Long Term Projects
  - b. SJHTCA Long Term Projects

## Project Planning

Before a discussion of individual projects, a review of project planning at TCA is warranted. The TCA is one of three transportation agencies operating in OC, each with complementary and sometimes overlapping roles, responsibilities and authorities. As a result of its investigation, the Grand Jury notes that over the past twenty-plus years, given legislation updates, charter changes, and shifts in responsibility, with the exception of debt repayment obligations, all activities currently being carried out by the TCA are included in the present legislated authority of both Caltrans and OCTA. These two agencies are described below.

- “Caltrans manages more than 50,000 miles of California's highway and freeway lanes, provides inter-city rail services, permits more than 400 public-use airports and special-use hospital heliports, and works with local agencies.”<sup>34</sup> Caltrans has evolved so that their projects must now be environmentally sustainable and they take the lead on environmental studies for new highway construction. Caltrans focus has recently been on funding maintenance and managing the assets they have.
- The OCTA is Orange County's regional transportation planning agency. They are active in a variety of transportation programs and services including freeways, streets and roads, express toll lanes, environmental programs, and OC Go (Measure M, the half-cent sales

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<sup>34</sup> <https://dot.ca.gov/about-caltrans>

tax to fund transportation). Historically, OCTA's responsibility is strategic planning & funding of capacity improvements. They became the primary agency for highway planning in the county when they assumed responsibility for the MPAH in 1995. That role expanded when they acquired ownership of the 91 expressway lanes in 2003. This led OCTA to investigate similar options on the 405. Some laws updated in 2013-2015 give OCTA ability to levy tolls.

Top level transportation planning in Orange County is summarized in the flow chart shown in Figure 2. The state has highway planning authority. The state Public Utilities Commission (PUC) gives OCTA final approval for capacity projects but allows Caltrans to do the planning/conceptual, project study report, environmental document. Once the environmental document is approved, then the idea becomes a project. The OCTA can accept input from the TCA then submit their plans to the Southern California Association of Governments (SCAG) for the Regional Transportation Plan (RTP) per the Memo of Understanding (MOU) with SCAG and embodied in statute. SCAG is also known as the Metropolitan Planning Organization and has the authority to put items in the 20-year Regional Transportation Plan (RTP). Note that the TCA could go directly to SCAG but that would be out of the norm.

Once a project is in the RTP, if there is money assigned to a phase in that year, it is programmed into the Federal Transportation Improvement Program (FTIP). The FTIP is a 6-year funding program and was last updated in 2018. The OCTA controls the FTIP per SCAG agreement. Again, TCA could go outside this but that would violate the agreement between SCAG & FTIP. The state has authority as well and Caltrans could go to SCAG and request something from TCA be included although this has not happened. The hierarchy then is Caltrans-SCAG-OCTA-TCA & others. Caltrans has power in that they can withhold approval of projects or environmental documents and OCTA has power in that they approve projects to go into FTIP. SCAG has additional powers from the Federal Government on certain plans, particularly related to air quality.

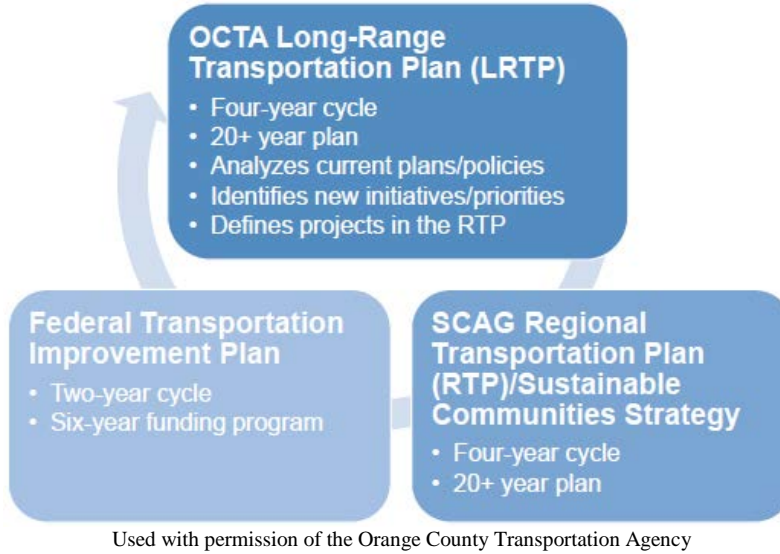


Figure 2. OC Transportation Planning

### Toll Road Projects

#### *SR-241- Oso Parkway Bridge*

The southern terminus of SR-241 is at Oso Parkway where the northern terminus of Las Patrones also is located as shown in Figure 3. Oso Parkway crosses the junction. Currently, southbound traffic must cross Oso Parkway to continue on to Los Patrones. The Oso Parkway Bridge will route Oso Parkway over the junction and enable traffic to directly transition between SR-241 and Los Patrones. This project is under construction and scheduled to complete this year at a currently projected cost of \$39 million.



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From <https://thetollroads.com/about/projects>

Figure 3. Oso Parkway Bridge Looking North

*SR-241- SR-91/241 Express Connector*

The northern end of SR-241 terminates at SR-91. The SR-91/241 Express Connector project will create a single tolled lane in each direction to and from SR-241 to the SR-91 express lanes to and from the east as shown in Figure 4. This will ease the drive for those traveling between Riverside and Orange County. This project will be funded by the TCA and is currently estimated at \$183 million although final cost is expected to be higher. Planning is well underway and has been coordinated with the other affected transportation planning agencies, Caltrans, OCTA and RCTC. While the project was expected to be completed by 2023 per a June 2019 TCA public release advertising documentation, the recent agreement between the four agencies now predicts it will not be constructed until the SR-91/I-15 connector project is complete, so it is still a few years away.



Used with permission of the Transportation Corridor Agencies  
From <https://thetollroads.com/about/projects>

Figure 4. SR-241/91 Interchange Looking South

*SR-241- SR-241 Extension to I-5*

SR-241 was originally planned to go from SR-91 in Anaheim all the way to I-5 somewhere near San Clemente. In late February 2006, after completing an environmental impact report on possible alignments, the TCA selected a route that traversed endangered species habitats, cut a state park in half and would be visible from San Onofre State Beach. In 2008, the California Coastal Commission denied a permit for the so called “Green Alignment” to complete SR-241 to I-5 as shown in Figure 5.



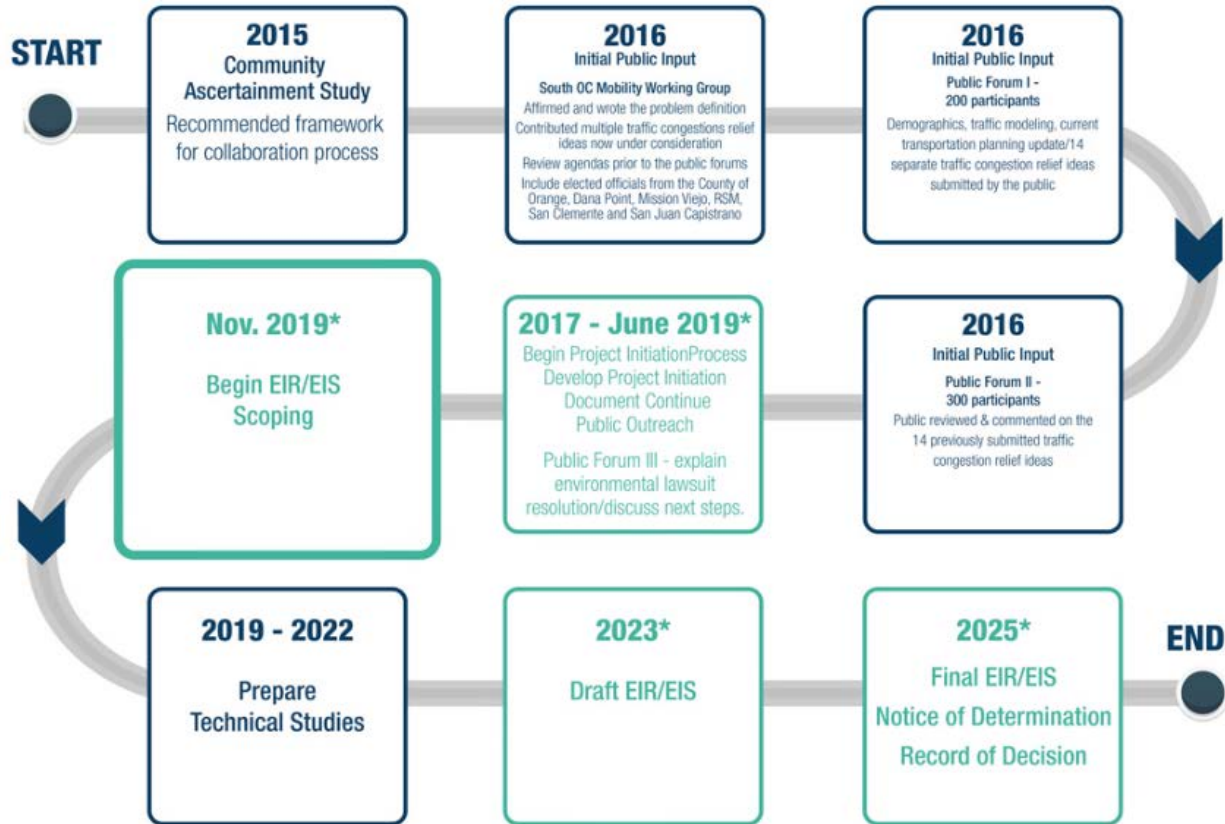


Used with permission of the Orange County Register

From <https://www.oregister.com/2016/11/11/after-a-15-year-battle-trestles-surf-spot-is-saved/>

Figure 5. Green Alignment

Since then the TCA had been planning with public input to develop viable alternatives following the general plan described in Figure 6. In May 2015, the TCA hired an independent consultant to conduct a community ascertainment study to gather input and gain insight into South County's mobility issues. The lawsuit that stopped the project was settled per an extensive agreement in November, 2016. Among other things, this agreement described various areas off limits to the SR-241 extension.



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Figure 6. SR-241 Extension Planning Process

Caltrans in cooperation with the F/ETCA (using F/ETCA funding) started the environmental review process for the SR-241 extension known as the South County Traffic Relief Effort (SCTRE) project. The purpose and fundamental objective was to improve north-south regional mobility in South Orange County. A number of possible proposed alignments were added as shown briefly in Figure 7. Ultimately, as previously stated, alternative 22 was selected. This route involves no additional toll roads and only county arterial improvements. It was favored by OCTA and cities that previously objected to other alignments such as San Clemente. Some funding could also be provided by the county, the city of Rancho Mission Viejo, and Measure M2, the renewal of the 2006 Measure M or OC Go, half-cent sales tax.

Although this project may be considered as part of the original plan for SR-241 to connect SR-91 to I-5, since the final project contains only arterial improvements and not toll roads, some believe it is beyond the original scope of the TCA’s governing legislation which was to just create the SR-241 toll road.



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From <https://sctre.org/wp-content/uploads/2019/11/Map-of-Project-Alternatives-1.pdf>

Figure 7. SR-241 Extension Alignment Options

*SR-241- Loma Segment Widening*

F/ETCA is planning to provide an additional lane on SR-241 from SR-133 to north of the junction with SR-261 in order to meet the F/ETCA Transportation Control Measure (TCM) commitment and improve traffic flow through this area.

### *SR-73- Catalina View Widening*

SJHTCA is considering adding a lane of SR-73 northbound from SR-133 to Sand Canyon (2.8 miles) and southbound from Newport Coast Drive to SR-133 (4.5 miles) to alleviate a 4:3 lane pinch. This is the only significant potential new project the SJHTCA has.

### **Other Planned Projects**

#### *I-5 Toll Lanes*

Some of the potential alignments for the SR-241 extension included adding toll lanes to I-5. It is hard to see how this should be considered a TCA project. Recently, new M2 funded 6 miles of I-5 High Occupancy Vehicle (HOV) lanes (also known as carpool lanes) were opened from San Juan Capistrano to Pico. Very shortly after opening, TCA decided to include High Occupancy Toll (HOT) lanes (also known as express lanes) on the same stretch of I-5. As a minimum, this could be considered offensive to the public since M2 tax dollars were used to construct the lanes and overlay these just completed projects on I-5. Legislation is clear how this is done.

Decisions to add tolls are sometimes hard but they should be based on sound planning principals and thoughtful analysis with clear criteria and the Orange County Board of Supervisors should make those decisions.

The original idea of toll lanes was to generate revenue. In the case of TCA, it was to pay off the bonds used to construct the toll roads. More recently, tolls have morphed into a traffic relief mechanism. Federal law dictates HOV lanes have average rush hour speeds of 45 mph as a minimum. HOT lanes with dynamic pricing are one way to achieve this standard as the case with the OCTA controlled SR-91 “Express Lanes.” Because of this methodology, Caltrans welcomes the opportunity to partner with the TCA as an alternative to meet the federal mandate. Also note that Caltrans encourages the use of tolls to help fund its maintenance backlog.

The following information provided to the Grand Jury is a more concise explanation of the evolving addition of tolls on California freeways:

Unlike eastern US state toll agencies where tolls were assessed to build and maintain the highways wherein the tolls are collected, generally in California, tolls are imposed to improve traffic flow. While this statement may seem counterintuitive, the idea is that the agency imposing the toll is looking to maintain an approximate 1,600 to 1,700 vehicles per hour per lane traveling at 50+ mph. For example, SR-91 has both general purpose (i.e. free) lanes and toll lanes. If the toll imposed is too low, people will gravitate from the congested general purpose lanes to save time and use the toll lanes, adversely affecting the total traffic flow through the toll lanes. Thus, the objective is to charge a toll as high as the market will bear to restrict traffic flow to this ideal 1,600 – 1,700 cars per hour flow number. This same reasoning goes into why Caltrans is in favor of imposing toll lanes throughout the state as well. Caltrans created the car pool lane system

and is functioning under a federal mandate that in order to obtain federal highway funds, they need to have car pool lanes support a traffic flow of at least 45 MPH. Thus, Caltrans favors using this financial incentive to limit traffic to more easily permit them to comply with the federal mandate as the financial expedient to adding more traffic lanes.

Additionally, revenue from tolled lanes will help ease Caltrans constant funds limitation challenges to do all of the work it is legislated to accomplish.

Another imperative is that there must always be a free road available. All toll roads and HOT lanes must have a free route of travel option.

### *Transportation Control Measures*

TCM projects or programs are designed to reduce vehicle use or increase traffic flow to reduce emissions and improve air quality. They are considered high priority. Paragraph 1.3 of the April 5, 2001 TCM Memorandum Of Understanding (MOU) (between the JPAs and SCAG) requires the TCA to construct eight lanes of highway (four in each direction) per the Regional Transportation Plan. As most of the TCA's highways are six-lane roads, this means that an additional 150-lane miles of highway are needed to comply with the agreement. After having almost 18-years to implement a 20-year MOU agreement, on January 31, 2019, by letter, the TCA informed the OCTA that they no longer intend to comply with this TCM.<sup>35</sup> The TCA staff believes other projects should be substituted and the lanes will not be complete by 2020. The late notice does not give OCTA enough time to adjust their plans since they were assuming TCA was on track to complete the TCMs as scheduled. In a March 28, 2019 letter from Marc Aprea of Aprea & Micheli, a government relations firm, to the Orange County Delegation and members of the Assembly Local Government Committee he stated:

“All of the TCM projects the TCAs are eliminating are included in publicly-approved, publicly debated, and carefully-crafted county and regional transportation and air quality plans. The TCA's arbitrary actions could jeopardize decades of local, county and regional planning and create significant issues related to their approved transportation documents.”

The Grand Jury found many of the BoD members were not aware of this request to not comply with the now 19-year old MOU by their agency.

A second item worth noting is cited in Paragraph 5.2 in the MOU with the F/ETCA (and an exact mirror image exists in the MOU with the SJHTCA) states:

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<sup>35</sup> Letter from Valarie McFall, Chief Environmental Planning Officer, TCA, to Kia Mortazavi, Executive Director of Planning, OCTA

“In order to improve and maintain AVO [Average Vehicle Occupancy], the agency shall proceed to undertake at its option ... [two options cited] ... designed to optimize AVO. This responsibility shall extend until such time as the construction bonds are repaid and Caltrans operates the F/ETCA as a free facility. The TCA shall deliver the Project to Caltrans with a striped HOV lane in each direction ready for use. Caltrans shall dedicate that single lane in each direction as an HOV lane to the extent consistent with the RTP [Regional Transportation Plan] and state law in place at that time.”

The implication of this memorandum is that SCAG foresees and the F/ETCA (and SJHTCA) agreed that at some future point, each agency will be dissolved and the highways it currently operates will be free of tolls for all to use. Conversely, as long as the TCA exists (and remember, the agencies were created to build limited access highways in Orange County and pay for them using means alternate to direct tax collections), tolls will be charged for the use of its route structure and DIFs will be charged county residents. Currently, because of the multiple changes to the structure of the JPA’s bond debt that date has been extended out to January 15, 2053.

Finally, the Grand Jury noted that several of the JPA BoD elected officials believe that the four state highways that form their system will never be toll free. From these statements, the Grand Jury can only conclude that:

- a. These individuals were unaware of the statements in the 2001 MOU between their agency and SCAG (as cited in the Traffic Control Measures paragraph in this report) that contradict this position;
- b. These individuals were unaware of specific procedures regarding tolls on California highways as cited in the California Streets and Highways Code that tends to contradict this position;
- c. These individuals were unaware of the fact that when the debts of these JPAs have been retired and the agencies cease to exist, the decision as to whether to charge a toll or not will entirely be up to recommendations made by Caltrans and/or OCTA.

#### *Projects in Proposed 2021 Budget*

The TCA is currently developing its FY21 budget. The pandemic has reduced toll revenues substantially and this is reflected in the proposed projects being considered. Table 3 lists the proposed projects and programs as presented during the April 22, 2020 Capital Programs and Projects Committee board meeting. Table 4 below summarizes the proposed budget by agency. These tables provide a good summary of the types of projects and how they are distributed between the SJHTCA and F/ETCA.

Table 3. Projects in Proposed 2021 Budget

Part 1 – Capital Improvement Projects		CATEGORY #1	CATEGORY #2	CATEGORY #3
		BASELINE	DISCRETIONARY	DEFERRED
1	SR 241/91 Express Connector	\$12,263,000		
2	Northbound SR-241 Channelizers at Windy Ridge	\$677,250		
3	Oso Parkway Bridge	\$5,569,643		
4	Sign Enhancements Project	\$1,202,500		
5	SR 73 Catalina View Traffic Improvements			\$1,991,960
6	Los Patrones Parkway Extension (Alt 22-Untolled from SCTRE)			\$923,000
7	SR 241 Loma Segment Widening			\$8,467,852
8	SR 241/Jeffrey Road I/C (Bee Canyon) (Study Only)			\$15,000
9	SR 133/Great Park I/C (Trabuco Rd I/C) (Coordination Only)			\$15,000
10	SR 241 Portola Parkway Bikeway Gap Closure			TBD
11	SR 73/Glenwood Interchange (Future Phases 2 & 3)			TBD
12	SR 73 Improvements - MacArthur to I-405 (Coordination only)			\$20,000
<b>TOTALS</b>		<b>\$19,712,393</b>	<b>\$0</b>	<b>\$11,432,812</b>

Part 2 – Engineering Department Baseline Activities including Project Management, Document Control, Caltrans Support, and Maintenance & Repair Projects, etc.		CATEGORY #1	CATEGORY #2	CATEGORY #3
		BASELINE	DISCRETIONARY	DEFERRED
13	Design/Program Management (CMG) - supporting essential functions: Document Control, Caltrans Lane Closures, Dig Alerts, etc.)	\$1,704,500		
14	Roadway Maintenance & Repairs (Channelizers, Signs, etc.)	\$300,000		
15	Aliso Creek Attenuator Repair Project	\$135,000		
16	Wildlife Safety Fencing (ETC)			TBD
17	Austin Sand Filter			\$420,000
18	Streetlight Traffic Data On-line Program (1-year Subscription)		\$282,000	
19	Traffic Studies		\$150,000	
<b>TOTALS</b>		<b>\$2,139,500</b>	<b>\$432,000</b>	<b>\$420,000</b>

Part 3 – Facilities Department Daily Operations and Ongoing Maintenance of TCA Offices and Toll Plaza Facilities		CATEGORY #1	CATEGORY #2	CATEGORY #3
		BASELINE	DISCRETIONARY	DEFERRED
20	Building Heating/AC/Mechanical/Landscaping/Janitorial, etc. - Daily and Annual Upkeep and Maintenance	\$2,374,000		
21	Pacifica Building Improvements (Design, Temporary Relocation, and Construction)			\$3,384,440
<b>TOTAL</b>		<b>\$2,374,000</b>	<b>\$0</b>	<b>\$3,384,440</b>

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Table 4. FY21 Proposed Budget by Agency

<b>Part 1 - Capital Improvement Projects</b>	<b>SJH FY21 Budget</b>	<b>F/E FY21 Budget</b>
SR 241/91 Express Connector	N/A	\$12,263,000
NB SR 241 Channelizers at Windy Ridge	N/A	\$677,250
Oso Parkway Bridge	N/A	\$5,569,643
Signage Enhancements	\$564,500	\$638,000
<b>Totals</b>	<b>\$564,500</b>	<b>\$19,147,893</b>
<b>Part 2 - Engineering Department Department Staffing, Maintenance &amp; Repair</b>	<b>SJH FY21 Budget</b>	<b>F/E FY21 Budget</b>
Program & Project Management	\$151,000	\$373,000
Document Control	\$106,000	\$212,000
Engineering Support	\$357,000	\$505,000
Maintenance & Repairs at Toll Plazas	\$150,000	\$150,000
Aliso Creek Attenuator Repair	\$135,000	N/A
<b>Totals</b>	<b>\$899,000</b>	<b>\$1,240,000</b>
<b>Part 3 - Facilities and Pacifica Building</b>	<b>SJH FY21 Budget</b>	<b>F/E FY21 Budget</b>
Facilities	\$0	\$2,300,000
Pacifica Building Improvements (deferred)	\$0	\$0
<b>Totals</b>	<b>\$0</b>	<b>\$2,300,000</b>

Used with permission of the Transportation Corridor Agencies



## Recently Completed Projects

Many recently completed projects are listed below from the TCA website.<sup>36</sup> Again, none of them involve constructing new toll roads since major toll road construction was completed more than 20 years ago. Most of them are lane widening and additions, toll system upgrades, and landscaping and fencing. Some of these may be considered other than “major thoroughfares and bridges.”

1. Constructed the Banderas Bridge Overcrossing, between Antonio Parkway and Santa Margarita Parkway at the 241 Toll Road, to improve traffic circulation within the city of Rancho Santa Margarita.
2. Added a second lane to the Santa Margarita Parkway on-ramp at the 241 Toll Road to accommodate high peak-hour traffic.
3. Widened the 1,500-foot-long Arroyo Trabuco Creek Bridge along the 241 Toll Road to the Ultimate Corridor configuration and added a second exit lane to the Santa Margarita Parkway off-ramp at the 241 Toll Road.
4. Added one additional lane in each direction of the 241 Toll Road between Arroyo Trabuco Creek and Bake Parkway and widened five twin north and southbound bridges to the Ultimate Corridor configuration.
5. Added a third FasTrak lane to the Tomato Springs Mainline Toll Plaza on the 241 Toll Road to address increasing traffic volumes and FasTrak usage.
6. Designed and installed landscape enhancements along the 241 and 261 Toll Roads.
7. Improved toll plaza and water and wastewater systems at three mainline toll plazas along the 133, 241 and 261 Toll Roads.
8. Widened the north and southbound 133 Toll Road from the I-5 Freeway to the 241 Toll Road.
9. Widened the Windy Ridge Mainline Toll Plaza by adding a third FasTrak lane in each direction and widened two bridges - the Southern California Edison Bridge and Windy Ridge Wildlife Bridge - to accommodate increased traffic.
10. Implemented All-Electronic Tolling (AET): TCA discontinued cash collection on the roads in May 2014. Outdated tolling equipment was upgraded with equipment that utilizes license plate tolling for those that do not have a FasTrak account, so everyone can drive non-stop on the roads.
11. Constructed a 6.4-mile-long wildlife safety fence to reduce the number of wildlife-vehicle collisions along the 241 Toll Road from Chapman Avenue/Santiago Canyon Road to SR-91 Freeway.

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<sup>36</sup> See <https://thetollroads.com/about/projects/1247>

12. Removed 14 toll booths and related toll collection equipment on multi-lane ramps where traffic passes on both sides of existing toll booths to improve traffic and enhance safety.
13. Constructed on- and off-ramps to and from the north at Glenwood/Pacific Park Drive on the 73 Toll Road.
14. Designed and installed landscape enhancements at various interchanges along the 73 Toll Road.
15. Widened nearly six miles of the northbound 73 Toll Road by adding a fourth lane in two locations. The first location is from Aliso Viejo Parkway to Laguna Canyon Road and the second location is from the Catalina View Mainline Toll Plaza to MacArthur Boulevard.
16. Implemented All-Electronic Tolling (AET): TCA discontinued cash collection on the roads in May 2014. Outdated tolling equipment was upgraded with equipment that utilizes license plate tolling for those that do not have a FasTrak account, so everyone can drive non-stop on the roads.
17. Removed 14 toll booths and related toll collection equipment on multi-lane ramps where traffic passes on both sides of existing toll booths to improve traffic and enhance safety.

## **Mission Creep**

As described above, the F/ETCA and SJHTCA were established via legislation<sup>37</sup> to “fund, plan, acquire and construct the major thoroughfares and bridges” of the corridors. The goal was clearly to build the roads, pay off the bonds, then go out of business. Maintenance and upgrades were not envisioned as part of TCA’s responsibilities.

The TCA has essentially completed its original mandate. This is particularly true for the SJHTCA which, with the exception of lane widening projects on SR-73, has not built any new roads since 1998. As mentioned, the F/ETCA’s SR-241- Oso Parkway Bridge and SR-241/91 Connector projects could be considered part of the original scope of creating SR-241. But it could be argued that the SR-241 extension to I-5, since it now only involves county arterials, is beyond the original scope and no further action into this issue should be considered by the F/ETCA.

The stated mission of the TCA per its website<sup>38</sup> is “The Transportation Corridor Agencies (TCA) were created with the very clear mission of enhancing mobility in Orange County and Southern California by developing and operating publicly-owned toll roads as a part of the state highway system.” It could be argued that this is a broader scope than what is authorized in the founding and subsequent replacement legislation. Contrary to its finite establishing and updated legislation, the TCA mission appears to be evolving. The TCA has also employed contractors to implement a public relations campaign to enhance its image in recent years. The effort also

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<sup>37</sup> Ibid. CA State Legislature Chapter 708, Statutes 1984, Section 66484.3

<sup>38</sup> See Mission statement in: <https://thetollroads.com/about/background>

appears to be an attempt by the TCA to garner public support for expanding its mission beyond its legislated mandate. The scope of services in their contracts include such items as: “Assist with building community, customer, grassroots, labor and political support for TCA efforts;”<sup>39</sup> “Begin to develop a long-term strategy that helps reposition the TCA and its leadership;”<sup>40</sup> “Consultant to provide advice to the Agency's Chief Executive Officer ("CEO") regarding opportunities for the Agency to play a more effective role in regional traffic and transportation issues;”<sup>41</sup> and “expanding CEO outreach, develop and implement media strategies to meet objectives and improve public opinion of the Agency.”<sup>42</sup> It should be noted that the TCA has a capable in-house public communications staff. This is evidenced by the excellent outreach and website updates they produced to address the COVID-19 pandemic. However, this apparent management directed evolution in expanded use of consultant project advocacy has resulted in conflicts with the OCTA. This is described above especially on the TCM and I-5 HOT projects. Caltrans appears to welcome this broader thinking by the TCA, likely because it looks at the TCA as a revenue source beyond its state authorized budget limitations.

Not all BoD members are familiar with either the 1986 founding agreement and/or the 2003 restated and amended agreement and/or the appendices attached to the first agreement and carried forward into the current agreement. A long time TCA consultant briefed the BoD on the laws concerning the operation of the JPAs and it appears that most board members rely on that class as their sole point of knowledge regarding the operation of their JPA. It should be noted that this was one of the consultants mentioned earlier who was tasked with developing ways to expand the TCA’s role in Orange County’s transportation planning and highway construction activities. In addition, when Grand Jury members either attended BoD meetings or observed meetings on-line, it was observed that occasionally a board member would make a statement that did not conform to the in-place legislation and agreements that govern both JPAs. For example, recently in a public meeting, it was observed that one member commented that he/she did not want specific limiting language in the material being created because he/she did not want to prevent a future board having a problem with it 40 years in the future even though the agency would sunset almost a decade sooner when the bonds were paid off.

An important fact here is that the Grand Jury did not find anything the TCA does that is unique and can’t be accomplished by OCTA and Caltrans other than the repayment of its substantial debt. The TCA clearly has the mission to operate the toll roads and pay off the bonds but beyond that, any additional planning and activities could be considered out of its legislatively authorized

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<sup>39</sup> K000867 Letter of Agreement between TCA and California Strategies, LLC, August 20, 2013

<sup>40</sup> Ibid

<sup>41</sup> K000883 Letter of Agreement between TCA and Stan Oftelie, October 29, 2013

<sup>42</sup> K000890 Letter of Agreement between TCA and Vectis Strategies, LLC, October 4, 2013

scope of activity since the toll roads are essentially complete. The Grand Jury could not find where either TCA BoD has addressed this issue recently.

As a result, the Grand Jury believes that all board members should be required to invest the limited time needed to read the following documents prior to accepting a position on the BoD of either JPA to be able to properly govern his/her agency:

- a. The original 1986 agreement that established the F/ETCA and SJHTCA so that they might be afforded a better understanding of why their agency exists.
- b. The 2003 amended/restated agreement governing both JPAs.
- c. The appendices attached to the 1986 document and carried forward in their entirety as appendices to the 2003 agreement.

### TCA Involvement in I-5 Projects

The Grand Jury was provided information with regards to TCA activities involving alliance with Caltrans in association with the I-5. Based upon all legislative authorizing documentation, any such activities are a clear over-reach of TCA authority in the transportation corridor program. Original planning stated that they were to terminate at the I-5 so their apparently politically motivated new work with Caltrans attempting to expand their scope of activity violates that mandate. It also intrudes into existing decade old OCTA planning for the same piece of highway.

The Grand Jury has received multiple citizen complaint letters regarding TCA involvement in the general movement by various highway planning agencies to move the use of HOV lanes from free to tolled. The TCA has consistently maintained to the Grand Jury that their official position is that they are not involved in this process although responses to the Grand Jury from multiple sources suggest there are unofficial overtures to outside agencies that contradict this position. According to the 2017 California HOV Facilities Degradation Report and action plan, “77% of Orange County HOV facilities do not meet federal operating standards.”

Grand Jury research indicates that Caltrans and other agencies in adjoining counties are increasingly considering conversion of HOV facilities into tolled or HOT lanes as a methodology for increasing traffic flow to meet the federal standards. Then too, the TCA – Caltrans cooperative agreement regarding the South County Traffic Relief Effort project appears to be an example of where some city officials pointed to this probable conclusion, since it can be argued that the premise for the study violated Public Utility Code sections 130252, 130300, and 130303 which grants OCTA the responsibility for approval of location and capacity of all capital development projects. Per comments to the Grand Jury, from its very outset in late 2016, the SCTRE project essentially excluded the OCTA from the process of formulating the conclusions for public comment and the study addresses the use of tolled roads connecting SR-241 to I-5 future tolled HOV lanes.

By attending committee and general BoD meetings and from other source comments, it can readily be concluded that the TCA is quietly seeking other projects beyond its legislatively limited scope of work to justify its continued existence and create new work justifying new bond offerings to extend its current existence beyond the current bond pay-off date. It is interesting to note that an agreement was entered into with Caltrans that beginning in 2041 (an original bond sunset date), the TCA must pay a significantly increased amount of money toward maintenance of its highway system. This is one more reason why the Grand Jury believes it would be in the county's best interests if the TCA looked at streamlining its operations to accelerate the retirement of its bond debt.

### TCA Involvement in other projects

Many other projects were described in the "Projects" section above that could be considered beyond the original mission and scope of the TCA to create "major bridges and thoroughfares."

## Attempts to Review or Limit TCA Operations

Over the years the TCA has been accused of questionable practices and plans. This is documented in a number of local newspaper articles.<sup>43,44,45</sup> In particular, many South County residents have objected to plans to extend SR-241 to I-5 and disrupting their communities. Some city council and TCA board members from these cities have also voiced their opposition. But the opposition appears to be more than NIMBYism and opponents are also reviewing the scope of TCA activities. Discussions among elected officials about limiting the TCA's role has sometimes been rancorous with some members of each side accusing others of being political.

The TCA has responded with a promotion campaign by hiring public relations contractors to promote its image. For instance, in one contract services included "assist with building community, customer, grassroots, labor and political support for TCA efforts" and "develop a long-term strategy that helps reposition the TCA and its leadership."<sup>46</sup>

Some recent calls to review or limit the TCA's activities are briefly described here.

### Rep. Mike Levin Letters

San Juan Capistrano's Mike Levin, US Congressman representing the 49th District (South OC & North San Diego), sent a letter<sup>47</sup> dated March 12, 2019 to Governor Gavin Newsom voicing

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<sup>43</sup> "Allegations of Toll Road Mismanagement Prompt Calls for Change," RSM Patch, April 24, 2019.

<sup>44</sup> "OCTA Outlines Conflicts with TCA in Committee Meeting," Dana Point Times, October 11-17, 2019.

<sup>45</sup> "Concerns raised over the study of making carpool lanes of the 5 Freeway in south county toll lanes," Orange County Register, November 12, 2019.

<sup>46</sup> See TCA contract K000867.

<sup>47</sup> Appendix Reference 5.

concern about overspending and misuse of public funds as reported by the Los Angeles Times.<sup>48</sup> He states in the letter, “TCA’s actions undermine public confidence and cannot be tolerated. I ask that you exercise your oversight authority in this situation and move to ensure that similar breaches are precluded in the future.”

Congressman Levin also co-authored a letter<sup>49</sup> dated April 23, 2019 with Laguna Beach’s Harley Rouda, US Congressman representing the 48<sup>th</sup> District (Coastal OC), to Laurie Berman, Caltrans Director. This letter mentioned the same issues as the previous letter and also described the efforts to extend SR-241. Congressman Levin believes “the TCA has acted beyond the scope of its authority as a toll road operator.” Laurie Berman, the Caltrans Director, responded with a letter<sup>50</sup> dated May 2, 2019. In her letter (attached in the appendix to this document) she cites the fact that the TCA was the sponsor of the SCTRE that Caltrans administered regarding the termination of SR-241 to I-5 connection. As the direct response to the congressmen’s concerns and request, she ended any Caltrans further action by stating:

“TCA’s scope of authority extends beyond the SHS and Caltrans does not have broad authority to audit the agency’s operations. Caltrans sits on the TCA Board of Directors as an ex-officio (non-voting) member and has the ability to recommend and comment on agenda items. ... Additionally, the TCA has procured a professional services contract to provide annual external audits of its financial statements.”

Congressman Levin also sent a letter<sup>51</sup> dated May 3, 2019 to Betty Yee, California State Controller. This letter again voiced concern about the issues described in the previously mentioned Los Angeles Times article. The controller’s office never responded to the Grand Jury’s request for information on what action, if any, it had taken to respond to the congressman’s request.

#### Cottie Petrie-Norris Letter

Laguna Beach’s Cottie Petrie-Norris, State Assemblywoman representing the 74<sup>th</sup> District (Central Coastal OC), sent a letter<sup>52</sup> dated January 13, 2020 to Rudy Salas, Chair of the Joint Legislative Audit Committee asking for an audit of the TCA. She writes in the letter, “Despite the fact that TCA has not completed any new highways in nearly 20 years, the agency continues to spend vast amounts on administration, public relations, and freeway designs that are at times inconsistent with other regional and local transportation plans.” Due to its pandemic hiatus in its

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<sup>48</sup> “A call to put the skids on high-priced experts’ fees,” Los Angeles Times, March 11, 2019.

<sup>49</sup> Appendix Reference 6.

<sup>50</sup> Appendix Reference 7.

<sup>51</sup> Appendix Reference 8.

<sup>52</sup> Appendix Reference 9.

operations, the Grand Jury was unable to determine whether any action has been taken with regards to this request.

### Internal Audits

In response to the allegations of improprieties in contracts with certain public relations firms as described above, the TCA has performed internal audits. One such audit was presented to the TCA Board of Directors during its January 9, 2020 meeting<sup>53</sup>. The audit found no irregularities other than a minor net under billing of \$5,761, representing a 0.12% error in total contract amounts paid. However, the audit did not review the details of work performed as described in the newspaper article as board members pointed this out during the discussion.

### AB 382, 2017-2018 Session

Oceanside's Rocky Chavez, the former State Assembly member representing the 76<sup>th</sup> District (North San Diego County), proposed AB 382<sup>54</sup> during the 2017-2018 Session. The author stated

“The TCA has been poor stewards of the money they have bonded, and re-financed, and the fees they receive on all new homes in Orange County; All without building new toll facilities in over 20 years. Their mission when created was to design, finance, build, and the hand over toll roads to the local Transportation authority. Today, they claim to be one of the two transportation authorities for Orange County, attempting to usurp OCTA's rightful authority throughout the entire county. Combine their inappropriate attempts to go beyond their scope with essentially indefinitely refinancing their bonds, other irresponsible financial moves, and not actually building anything in over twenty years, you can see TCA no longer serves their initial purpose. They should be tasked with managing and maintaining current toll roads until they are ready to be handed over to local transportation authority.”

This bill essentially would have prohibited the TCA from developing new roads or incur new debt after January 1, 2018.<sup>55</sup>

The city of San Clemente and south county residents supported the bill, primarily due to their opposition to planned SR-241 extension routes at the time. Many other Orange County cities and business groups opposed the measure. The legislature was reluctant to take such a drastic step to limit the TCA. Among the facts they cited were: the fact that no bond payments had ever been missed; they were unwilling to set the precedent to limit a local authority to issue debt; and the

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<sup>53</sup> See Agenda Item 06 File Number 2020J-016 in the January 9, 2020 TCA BoD meeting packet which can be found at <https://tca.civicclerk.com/Web/Player.aspx?id=283&key=-1&mod=-1&mk=-1&nov=0>

<sup>54</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180AB382](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB382)

<sup>55</sup> See the “Bill Analysis” tab on the web page for detail.

TCA board was comprised of local elected officials who can poll their constituents and vote accordingly. The bill was voted down in the state senate committee.

### AB 1273, 2019-2020 Session

Dana Point's Bill Brough, State Assembly member representing the 73<sup>rd</sup> District (South OC), proposed a similar bill, AB 1273,<sup>56</sup> during the 2019-2020 Session. The author stated

“TCA’s planning and development authority is duplicative and redundant. OCTA serves as Orange County’s transportation commission, which gives it the power to plan, design, construct, and operate highways in partnership with the State, the County of Orange, and cities throughout Orange County. TCA’s plans and studies are frequently inconsistent with the priorities and master planning of OCTA, the Orange County, and Orange County cities. These redundancies and inconsistencies harm regional planning, destabilize real estate markets, endanger schools, and threaten open space and other natural resources that have been set aside by developers and local agencies as public amenities.”

“My bill, AB 1273, establishes regional planning authority and stops additional debt. This bill continues the ongoing funding of the TCA, through tolls, for the repayment of that existing debt. Additionally, it allows for the refunding of existing debt to facilitate the repayment of the debt at commercially better terms thus protecting bondholders and the creditors. AB 1273 will return the Toll Roads to its core mission as a toll road operator, pay off the bonds, and turn the roads over to the people as free, which was the original intent.”

This bill essentially would have prohibited the TCA from developing new roads or incur new debt after January 1, 2020.<sup>57</sup> (See the “Bill Analysis” tab on the web page for detail.)

Again, the city of San Clemente and south county residents supported the bill while many other Orange County cities and business groups opposed the measure. The bill was voted down in committee.

This bill has fostered quite a bit of animosity between the bill’s author and other TCA opponents against TCA proponents. Roiling public opinion to oppose the legislation he authored, allegations of sexual improprieties resurfaced against Mr. Brough and even though he professes innocence and the claims are political retribution for his questioning of the TCA’s expenditures, activities, and possible malfeasance, he has recently been stripped of his assembly committee responsibilities.<sup>58</sup> The Grand Jury learned that other TCA critics believe they have been

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<sup>56</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB1273](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1273)

<sup>57</sup> See the “Bill Analysis” tab on the web page for detail.

<sup>58</sup> California investigation concludes GOP Assemblyman Bill Brough offered political favors for sex, Orange County Register, May 27, 2020;



personally targeted suggesting there should be a Fair Political Practices Commission investigation of TCA lobbying, financial dealings, and advocacy activities. While complaints to the Grand Jury suggest this is probably warranted, the Grand Jury is unaware that any such investigation has been requested or initiated.

TCA advocates also believe they have been unfairly under fire. An example of this is Rancho Santa Margarita Councilman and TCA Director Anthony Beall's address to the TCA Board during its March 12, 2020 BoD meeting<sup>59, 60</sup> where he blamed his recent recall notice and FPPC investigation on TCA opponents. It should be noted that Mr. Beall's seven minute personal remarks came during a meeting where members of the public were only allotted two minutes (rather than the usual three minutes) to speak and one past TCA board member's remarks as a private citizen were cut short because of the time limitation.<sup>61, 62</sup>

### SB 1373, 2019-2020 Session

Pat Bates, State Senate member representing the 36<sup>th</sup> District (Long Beach) proposed SB 1373<sup>63</sup> May 19, 2020. The current version of the bill simply redefines SR-241 since it has been decided SR-241 will not be extended to I-5. Previously, SR-241 was defined "from Route 5 south of San Clemente to Route 91" but this bill changes it to "from Oso Parkway east of the City of Mission Viejo to Route 91." This new definition makes sense in light of the SCTRE Alternative 22 selection as the preferred route to connect SR-241 to I-5. Previous versions of the bill stated entities "shall not construct, fund, or operate, nor take property to construct, fund, or operate, a new major thoroughfare in San Clemente in an area that is subject to a conservation easement or is designated as open space protected by a local initiative." This would apply only to new projects. This wording was debated during the April 23, 2020 External Affairs Committee and May 14, 2020 BoD meetings. The Board voted to send a letter opposing this previous wording during its May 14, 2020 meeting. Many board members adamantly oppose almost any restriction on activities, even if the restriction would occur many, many years in the future.

The Grand Jury knows of one case where a TCA BoD member acted favorably on a TCA contract with a firm where he/she had a personal or political interest. Then too, the Grand Jury finds it curious that over the same time frame, in an almost "Tammany Hall" fashion, any elected official who opposed any action taken (especially those that might limit its scope of activity) by the TCA would at some point immediately thereafter in his or her re-election cycle find that hitherto unknown or from an unexpected quarter discover substantial opposition in the form of withdrawal of recommendations or creation of complaints or withdrawal of funding arising to

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<sup>59</sup> See the March 12, 2020 TCA Board Meeting video at <https://thetollroads.com/about/meetings-agendas>

<sup>60</sup> A transcript of a portion Mr. Beall's address is in Appendix 8

<sup>61</sup> Ibid., TCA meeting of March 12, 2020.

<sup>62</sup> See Appendix 8 for a partial transcript of Mr. Beall's comments

<sup>63</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200SB1373](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB1373)

inhibit their re-election to office. Because of the COVID-19 hiatus, the Grand Jury was unable to investigate these issues further.

## FINDINGS

In accordance with California Penal Code Sections §933 and §933.05, the 2019-2020 Grand Jury requires responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation described here, the 2019-2020 Orange County Grand Jury has arrived at the following principal findings:

- F1. The SJHTCA has completely fulfilled its original mandate to plan, finance, and build SR-73 yet it continues to involve itself in future planning efforts, some of which are probably outside the purview with its charter.
- F2. Some budget cost allocations burden SJHTCA with costs not associated with an agency who has fulfilled its mandate, such as Strategic Planning and Advocacy. Based on relative road lengths, SJHTCA is allocated more than its share of common TCA costs, reducing its ability to retire its debt.
- F3. The F/ETCA has fulfilled the bulk of its original mandate to plan, finance, and build the SR-133, 241, 261 transportation corridor network. Only the SR-91 to SR-241 connector and in compliance with the approved Alternative 22 to the SCTRE report, the termination of the link between SR-241 and I-5 remain to be completed.
- F4. The TCA has been and continues to be involved in projects, such as the I-5 HOV and HOT lanes, toll road enhancements, bike lanes, landscape maintenance, which may be considered beyond its original and currently legislated mandate.
- F5. With the exception of the repayment of its accumulated debts, there appears to be little if anything in the matter of highway planning, construction, or any county transportation activities the TCA can do that is not already being accomplished by OCTA and/or Caltrans.
- F6. The TCA receives payment of Development Impact Fees for new construction per the Major Thoroughfare and Bridge Fee Program which remains in effect until all TCA bonds have been fully repaid, requiring Orange County residents and corporations to continue to pay the fees which increase every year.
- F7. While the idea of using tolls to fund the development of new state highways in California's historically free highway system enabled construction of the roads, toll lanes

are now instead being used to increase the average speed of HOV lanes to meet the federal mandate.

- F8. The TCA employs political and public relations consultants as a promotional tool to help broaden its scope of activities (to include advertising aimed at improving its public image) that would extend beyond its legislated boundary limits.
- F9. The TCA has a capable in-house communications staff as evidenced by the excellent COVID-19 Communications Plan.
- F10. Not all material presented in TCA committee meetings is available in the Board Meeting packet resulting in an incomplete presentation to the Board and public.
- F11. Recently, much of the planning is being performed by consultants and TCA staff, who have a financial interest in seeing the TCA continue beyond its original mandate, and out of view of many of the TCA board members and the public thus creating a conflict of interest issue.
- F12. Elected officials who have voiced opposition to the TCA have been subjected to negative information campaigns by TCA proponents.
- F13. It appears that neither the F/ETCA nor the SJHTCA has complied with April 5, 2001 MOU signed by each of these agencies with SCAG regarding their agreement to collectively construct approximately 150 additional lane miles of highway to (per section 1.1, 1.2, 1.3 Recitals, and following) over the ensuing span of the agreement.
- F14. It was observed that some elected BoD members showed limited knowledge of the agreements and codes that govern the creation and operation of their agency possibly contributing to the potential for poor management and/or leadership.

## **RECOMMENDATIONS**

In accordance with California Penal Code Sections §933 and §933.05, the 2019-2020 Grand Jury requires responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation described herein, the 2019-2020 Orange County Grand Jury makes the following recommendations:

- R1. Since SR-73 is complete, the SJHTCA should consider refraining from further project planning and construction so that it can focus its entire efforts on paying off the bonds and sun-setting its operations. (F1, F2),

- R2. The SJHTCA Board should task TCA staff to rework budget allocations in a more equitable fashion given the relative length of the single road managed by SJHTCA as compared to F/ETCA as well as the dearth of future SJHTCA projects. (F1, F2)
- R3. The F/ETCA should consider refraining from further expansion, project planning, and construction beyond that required by SCAG so it can focus its entire efforts on completing the SR-241 projects currently underway and paying off its bonds. (F3)
- R4. The TCA should consider withdrawal from any involvement in the I-5 HOV and county HOT planning and construction since this is beyond its legislated mandate. (F4, F5)
- R5. Communication efforts should be limited to informing the public about core TCA activities and use of its highway system. (F8)
- R6. The TCA should review its use of political and public relations consultants in an effort to more fully utilize its competent in-house communications staff. (F8, F9)
- R7. TCA staff should include in the Board of Directors meeting packets ALL presentation materials discussed in the Board of Directors and committee meetings. (F10, F11)
- R8. Although technically correct, the TCA should no longer use phrases such as “No taxpayer money has been used to construct the toll roads” since taxpayers have paid and are still paying Development Impact Fees and will continue to do so until the bonds are retired. (F6)
- R9. Every elected member of the BoD of each JPA as a condition of membership on that board should be required to read and acknowledge having done so the three governing documents regarding the creation and operation of the JPAs (as cited in the “Mission Creep” paragraph above). (F1, F2, F3, F4, F5, F11, F13)
- R10. The F/ETCA and the SJHTCA should review the April 5, 2001 MOU each signed with SCAG and negotiate a future date for full compliance with the agreement or negotiate an acceptable compromise to all parties in accordance with section 6 (Administrative Dispute Resolution Mechanism) of that document. (F13)
- R11. While it is recognized that the Orange County Board of Supervisors (BoS) has representatives on the BoD of each of the two JPAs cited herein, the BoS should, as an entire panel, review the findings of this report and take appropriate action to investigate and remediate the issues raised, to include a directive aimed at reducing the total financial burden placed on the county citizenry and the users of the four state highways within Orange County. (F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11, F12, F13, F14)

## RESPONSES

The following excerpts from the California Penal Code provide the requirements for public agencies to respond to the Findings and Recommendations of this Grand Jury report:

### §933

*(c) No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section 914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations. All of these comments and reports shall forthwith be submitted to the presiding judge of the superior court who impaneled the grand jury. A copy of all responses to grand jury reports shall be placed on file with the clerk of the public agency and the office of the county clerk, or the mayor when applicable, and shall remain on file in those offices. One copy shall be placed on file with the applicable grand jury final report by, and in the control of the currently impaneled grand jury, where it shall be maintained for a minimum of five years.*

### 933.05.

*(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:*

*(1) The respondent agrees with the finding.*

*(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.*

*(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:*

*(1) The recommendation has been implemented, with a summary regarding the implemented action.*

*(2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.*

*(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.*

*(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.*

*(c) However, if a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or*

*department head and the board of supervisors shall respond if requested by the grand jury, but the response of the board of supervisors shall address only those budgetary or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.*

*(d) A grand jury may request a subject person or entity to come before the grand jury for the purpose of reading and discussing the findings of the grand jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.*

*(e) During an investigation, the grand jury shall meet with the subject of that investigation regarding the investigation, unless the court, either on its own determination or upon request of the foreperson of the grand jury, determines that such a meeting would be detrimental.*

*(f) A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the final report.*

*(Amended by Stats. 1997, Ch. 443, Sec. 5. Effective January 1, 1998.)*

## **Responses Required**

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required from:

### **Findings**

San Joaquin Hills Transportation Corridor Agency	F1,2,4,5,6,7,8,9,10,11,12,13,14
Foothill/Eastern Transportation Corridor Agency	F3,4,5,6,7,8,9,10,11,12,13,14
Orange County Board of Supervisors	F1,2,3,4,5,6,7,8,9,10,11,12,13,14

### **Recommendations**

San Joaquin Hills Transportation Corridor Agency	R1,2,4,5,6,7,8,9,10
Foothill/Eastern Transportation Corridor Agency	R3,4,5,6,7,8,9,10
Orange County Board of Supervisors	R11

## REFERENCES

1. Joint Exercise of Powers Agreement Creating the San Joaquin Hills Transportation Corridor Agency, January 30, 1986
2. Joint Exercise of Powers Agreement Creating the Foothill/Eastern Transportation Corridor Agency, January 30, 1986
3. Second Amended and Restated Joint Exercise of Powers Agreement creating the Foothill/Eastern Transportation Corridor Agency, November 19, 2002
4. Major Thoroughfare and Bridge Fee Program for San Joaquin Hills Transportation Corridor Agency and Foothill/Eastern Transportation Corridor Agency, July 1985 (revised and amended September 1988, January 1991. And June 1997)
5. Letter from US Congressman Mike Levin to Governor Newsom, March 12, 2019. See Appendix Item 3.
6. Letter from US Congressmen Mike Levin and Harley Rouda to Caltrans Director Laurie Berman, April 23, 2019. See Appendix Item 4.
7. Letter from Caltrans Director Laurie Berman to US Congressmen Mike Levin and Harley Rouda, May 2, 2019. See Appendix Item 5.
8. Letter from US Congressman Mike Levin to Controller Betty Yee, May 3, 2019. See Appendix Item 6.
9. Letter from Cottie Petrie-Norris to Chairman Rudy Salas, Joint Legislative Audit Committee, January 13, 2020. See Appendix Item 7.

## GLOSSARY

A list of definitions for uncommon terms and acronyms is included here

AB	Assembly Bill
AVO	Average Vehicle Occupancy
BoD	Board(s) of Director(s)
BoS	Board of Supervisors
Caltrans	California Department of Transportation
CEO	Corporate Executive Officer
DIF	Development Impact Fee
EIR	Environmental Impact Review
EIS	Environmental Impact Study
F/ETCA	Foothill/Eastern Transportation Corridor Agency
FPPC	Fair Political Practices Commission
FTIP	Federal Transportation Improvement Program
FY	Fiscal Year
JPA	Joint Powers Authority
MTBFP	Major Thoroughfare and Bridge Fee Program
MOU	Memo of Understanding
MPAH	Master Plan of Arterial Highways
NIMBY	Not In My Back Yard
OCTA	Orange County Transportation Authority
PSH	Permanent Supportive Housing
PUC	Public Utilities Commission
RCTC	Riverside County Transportation Commission
RTIP	Regional Transportation Plan
SCAG	Southern California Association of Governments
SCTRE	South County Traffic Relief Effort
SJHTCA	San Joaquin Hills Transportation Corridor Agency
SR	State Route
TCA	Transportation Corridor Agency (Agencies)
TCM	Transportation Control Measures



## APPENDIX

1. Detailed table of Development Impact Fees cost to Orange County.

		<b>San Joaquin Hills TCA</b>			
		<b>Projections based on annual increase of 2.667%</b>			
		<b>2019</b>	<b>2029</b>	<b>2039</b>	<b>2050</b>
<b>Single Family (per unit)</b>	<b>Zone A</b>	\$5,740	\$7,274	\$9,465	\$12,757
	<b>Zone B</b>	\$4,448	\$5,637	\$7,334	\$9,886
<b>Multi-Family (per unit)</b>	<b>Zone A</b>	\$3,343	\$4,237	\$5,512	\$7,430
	<b>Zone B</b>	\$2,595	\$3,289	\$4,279	\$5,767
<b>Non-Residential (per sq ft)</b>	<b>Zone A</b>	\$7.69	\$9.75	\$12.68	\$17.09
	<b>Zone B</b>	\$5.68	\$7.20	\$9.37	\$12.62
		<b>Foothill/Eastern TCA</b>			
		<b>Projections based on annual increase of 2.206%</b>			
		<b>2019</b>	<b>2029</b>	<b>2039</b>	<b>2052</b>
<b>Single Family (per unit)</b>	<b>Zone A</b>	\$5,925	\$7,211	\$8,969	\$11,911
	<b>Zone B</b>	\$4,448	\$5,637	\$7,334	\$10,326
<b>Multi-Family (per unit)</b>	<b>Zone A</b>	\$3,460	\$4,211	\$5,238	\$6,955
	<b>Zone B</b>	\$2,595	\$3,289	\$4,279	\$6,025
<b>Non-Residential (per sq ft)</b>	<b>Zone A</b>	\$7.69	\$9.75	\$12.68	\$17.85
	<b>Zone B</b>	\$5.68	\$7.20	\$9.37	\$13.19

The Transportation Corridor Agencies- Are They Taking Their Toll On Orange County?

2. Possible accelerated payment schedule for SJHTCA bonds to sunset the agency.

Fiscal Year	Projected Revenues	Operating Expenses	Investment Income	Interest on Debt Service	Net Change to Cash	Current Cash	Non Current Cash & Inves.	Available for Debt Retirement	Series 1997A Principal	Series 2014 Senior Lien Bonds	Series 2014 Junior Lien Bonds	Series 1997A Capital Appreciation Bonds	Sinking fund Payments	Cash After Principal Payments	Move Non Current Cash to Pay Debt
6/30/2019						197,217,000	497,737,000	694,954,000							
6/30/2020	198,000,000	18,104,500	9,954,740	67,795,142	122,055,098	319,272,098	497,737,000	817,009,098	57,930,000			1,100,000	40,090,858	220,151,240	
6/30/2021	201,960,000	19,009,725	9,954,740	67,795,749	125,109,266	345,260,506	497,737,000	842,997,506	61,455,000			12,385,000	31,604,251	239,816,255	
6/30/2022	205,999,200	19,960,211	9,954,740	106,105,813	89,887,916	329,704,171	497,737,000	827,441,171	65,210,000			7,945,000	(7,021,813)	263,570,984	
6/30/2023	210,119,184	20,958,222	9,954,740	102,847,533	96,268,169	359,839,153	497,737,000	857,576,153	69,210,000			21,625,000	(17,741,638)	286,745,791	
6/30/2024	214,321,568	22,006,133	9,954,740	98,764,603	103,505,572	390,251,363	497,737,000	887,988,363	73,475,000			20,705,000	(13,777,098)	309,848,461	
6/30/2025	218,607,999	23,106,440	9,954,740	97,847,139	107,609,161	417,457,622	497,737,000	915,194,622	78,015,000			83,925,000	(73,865,789)	329,383,410	
6/30/2026	222,980,159	24,261,762	9,954,740	89,826,832	118,846,306	448,229,716	397,737,000	845,966,716	82,845,000		117,600,000	60,560,000	(47,280,237)	334,504,953	100,000,000
6/30/2027	227,439,762	25,474,850	7,954,740	89,767,740	120,151,913	454,656,865	297,737,000	752,393,865	87,965,000		176,310,000	5,965,000	-	284,416,865	100,000,000
6/30/2028	231,988,557	26,748,592	5,954,740	88,553,530	122,641,175	407,058,041	297,737,000	704,795,041	93,410,000	100,685,000		395,000	-	212,568,041	
6/30/2029	236,628,329	28,086,022	5,954,740	34,837,250	179,659,797	392,227,838	197,737,000	589,964,838	99,185,000	249,875,000		7,710,000	-	135,457,838	100,000,000
6/30/2030	241,360,895	29,490,323	3,954,740	27,531,750	188,293,562	323,751,400	97,737,000	421,488,400	146,110,000			1,395,000	-	276,246,400	100,000,000
6/30/2031	246,188,113	30,964,839	1,954,740	20,829,250	196,348,764	472,595,164	97,737,000	570,332,164	134,050,000			17,915,000	18,906,486	301,723,678	
6/30/2032	251,111,875	32,513,081	1,954,740	13,783,000	206,770,534	508,494,212		508,494,212	140,925,000			59,540,000	(18,906,486)	424,672,699	97,737,000
6/30/2033	50,000,000	34,138,735	0	6,375,500	9,485,765	434,158,464		434,158,464	148,150,000			-	-	286,008,464	
6/30/2034		35,845,672	0		-35,845,672	250,162,792		250,162,792	127,510,000			4,960,000		117,692,792	
6/30/2035		37,637,955	0		-37,637,955	80,054,837		80,054,837				1,265,000		78,789,837	
6/30/2036		39,519,853	0		-39,519,853	39,269,984		39,269,984				8,720,000		30,549,984	
6/30/2037															
6/30/2038															
6/30/2039															
6/30/2040															
6/30/2041															
6/30/2042															
6/30/2043															
6/30/2044															
6/30/2045															
6/30/2046															
6/30/2047															
6/30/2048															
6/30/2049															
6/30/2050															
TOTALS									768,700,000	1,047,305,000	293,910,000	316,110,000	(87,991,466)		
In constructing this chart several assumptions were used based on information provided to the Grand Jury as well as those based on similar types of projections. Revenues were projected to increase 2% per year; operating expenses were projected to increase 5% per year. Non current cash and investments were assumed to be unavailable for debt retirement until after 2025. Series 1997A bonds were retired as scheduled but commencing in 2020 rather than 2037; increasing the payoff amounts per year would result in a shorter payoff period given the reduction of interest expense. Series 2014 bonds are not subject to early redemption before 2026.															

3. Letter from US Congressman Mike Levin to Governor Newsom, March 12, 2019.

MIKE LEVIN  
49th District, California

1620 LONGWORTH PALACE DRIVE, BUILDING  
WASHINGTON, DC 20515  
(202) 225-3906

Congress of the United States  
House of Representatives  
Washington, DC 20515-0549

March 12, 2019

Governor Gavin Newsom  
1303 10th Street, Suite 1173  
Sacramento, CA 95814

Dear Governor Newsom,

I write with concern about a recent report<sup>1</sup> that the Transportation Corridor Agencies (TCA) have potentially overspent and misused public funds while promoting a toll road project in south Orange County, which is part of the 49th Congressional District. TCA's actions appear to be a betrayal of the public trust. I urge you to ensure that appropriate ethical and transparency measures are in place for Joint Powers Authorities authorized by the State of California such as TCA.

As you may know, TCA is comprised of two Joint Powers Authorities that operate in Orange County. A 1987 state law allows TCA to build and manage toll roads throughout the county. TCA has been entrusted with operating four roads, which now constitute 20 percent of the county's limited-access highway system. As referenced previously, the agency is currently pursuing plans to build another toll road in my district but has faced multiple lawsuits alleging violations of public input and transparency laws.

Reports indicate that TCA's inappropriate actions go further than had been previously alleged. A story published on March 11, 2019 in the *Los Angeles Times* uncovered that TCA officials allowed for the potential misuse of hundreds of thousands of dollars in public funds. This took the form of gross overpayments to consultants with little demonstrable benefit to the public. Examples from the *Times* report include payments totaling \$230,000 for TCA's consultants to read "emails of news from transportation stories" and \$14,000 for the agency's own consultants to meet with each other. This waste of taxpayer dollars is at best irresponsible and at worst evidence of greater impropriety.

TCA's actions undermine public confidence and cannot be tolerated. I ask that you exercise your oversight authority in this situation and move to ensure that similar breaches are precluded in the future.

I look forward to working with you to ensure that this matter is handled appropriately. Should you have any questions, please feel free to contact me or to direct your staff to contact my office at (202) 225-3906.

Sincerely,



MIKE LEVIN  
Member of Congress

<sup>1</sup> Elmahrek, Adam. March 11, 2019. "The battle to tame O.C. traffic now rages over fees for high-priced consultants." *Los Angeles Times*.

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4. Letter from US Congressmen Mike Levin and Harley Rouda to Director Laurie Berman, Caltrans, April 23, 2019.

Congress of the United States  
Washington, DC 20515

April 23, 2019

Laurie Berman  
Director  
California Department of Transportation  
1120 N Street  
Sacramento, CA 95814

Dear Director Berman,

We write to express our grave concerns about the Transportation Corridor Agency (TCA) and its plans to plan new routes throughout our districts. TCA is pursuing these plans in concert and with the support of the California Department of Transportation (Caltrans) District 12. The range of routes presented by the TCA would negatively impact our constituents while delivering little traffic relief, and we ask that Caltrans reject any further study of these alternatives in the state and federal environmental process.

As you know, the TCA formed in 1986 as a joint powers authority (JPA) by Orange County and several cities following planning that began in the 1970s identifying the need for new highways. Unfortunately, the TCA has acted beyond the scope of its intended purpose and begun planning new routes that pass through San Juan Capistrano and San Clemente that are inconsistent with the statutory definition of SR-241. It is concerning that these proposals would toll recently completed public infrastructure and are based on questionable traffic forecasting techniques.

Our concerns about TCA are not only limited to the agency acting outside of its jurisdiction. The *Los Angeles Times* recently that reported TCA spent hundreds of thousands of dollars on outsized consulting contracts including one consultant that billed \$185 per hour to "read the news."<sup>1</sup> We believe this, combined with the TCA's inaccurate road projections, show that the TCA is incapable of effectively managing toll roads, let alone planning and building additional infrastructure.

We firmly believe the TCA has acted beyond the scope of its authority as a toll road operator and should immediately terminate its plans to act outside its jurisdiction. We further urge you to open a complete and public review of the TCA, its current operations, and any future plans the agency may have. Doing so would bring transparency to the process of planning, building, and operating toll roads.

Affordability and transportation are major issues in Orange County and the TCA has exacerbated both issues to the detriment of our constituents. Thank you for your attention to this important matter.

Sincerely,



MIKE LEVIN  
Member of Congress



HARLEY ROUDA  
Member of Congress

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CC: Vince Mammano, Division Administrator, California Division, Federal Highway Administration  
Brian Annis, Secretary, California State Transportation Agency

5. Letter from Caltrans Director Laurie Berman to US Congressmen Mike Levin and Harley Rouda, May 2, 2019

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

Gavin Newsom, Governor

**DEPARTMENT OF TRANSPORTATION**

OFFICE OF THE DIRECTOR  
P.O. BOX 942873, MS-49  
SACRAMENTO, CA 94273-0001  
PHONE (916) 854-6130  
FAX (916) 653-5776  
TTY 711  
www.dot.ca.gov



Making Conservation  
a California Way of Life.

May 2, 2019

The Honorable Harley Rouda  
United States House of Representatives  
2300 Rayburn HOB  
Washington, D.C. 20515

The Honorable Mike Levin  
United States House of Representatives  
1626 Longworth HOB  
Washington, D.C. 20515

Dear Representative Rouda and Representative Levin:

Thank you for your recent letter concerning the Transportation Corridor Agency (TCA). I appreciate you contacting the California Department of Transportation (Caltrans) regarding this matter. As owner and operator of the California State Highway System (SHS), Caltrans is responsible for planning, designing, constructing, operating, and maintaining the transportation system in California, which includes approving all proposed improvements to the SHS and interstate system.

In 1987, Senate Bill 1413 amended section 66484.3 of the California Government Code to allow for the formation of Joint Powers Authorities between the County of Orange, cities within the County, and/or other local agencies for the purpose of funding and constructing bridges and major thoroughfares. The TCA was formed under this authorization. The TCA operates within the County of Orange and is responsible for funding and constructing toll roads in Orange County, which includes State Routes 73, 133, 241, and 261. The toll roads comprise approximately 20 percent of the major highway system in Orange County, and they contribute to offering mobility options and congestion relief for people to travel in and around the County. Construction of these facilities may not have been possible without TCA.

Regarding plans for new routes in your Congressional districts, TCA is the project sponsor for the preparation of the Project Study Report-Project Development Support (PSR-PDS) document, which estimates project scope, cost, and schedule needed for more detailed evaluations of the proposed alternatives to address transportation needs within the study area. This document assesses a range of potential alternatives that could relieve traffic congestion in South Orange County. The PSR-PDS currently has eight build alternatives and one no build alternative that are undergoing analysis as part of the South Orange County Traffic Relief Efforts.

*"Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability"*

The Honorable Harley Rouda  
The Honorable Mike Levin  
May 2, 2019  
Page 2

Once the PSR-PDS phase is complete, the project will move into the Project Approval and Environmental Document (PA&ED) phase. During the PA&ED phase, the potential environmental impacts of the considered alternatives will be evaluated, and members of the public will have the opportunity to provide input on a range of proposed alternatives, which may be narrowed down or expanded in the early stages of the PA&ED phase. A Project Development Team consisting of key stakeholders will analyze alternatives and associated technical studies to provide a recommendation of a preferred alternative to Caltrans District 12 Director Ryan Chamberlain for consideration. The PA&ED phase would be the most appropriate time for Caltrans to accept or reject project alternatives.

TCA's scope of authority extends beyond the SHS and Caltrans does not have broad authority to audit the agency's overall operations. Caltrans sits on the TCA Board of Directors as ex-officio (non-voting) member and has the ability to recommend and comment on agenda items. The TCA recently performed an internal audit of current communications contracts and is engaging with a third-party auditor to further evaluate the contracts. Additionally, the TCA has procured a professional services contract to provide annual external audits of its financial statements.

Caltrans is committed to working with the public, local, county, and regional agencies, and other stakeholders and partners to find solutions that could relieve traffic congestion in South Orange County in the most efficient and effective way possible. If you have any questions or concerns, please contact me at (916) 654-6130 or Giles Giovinazzi, Caltrans Chief of Staff & Federal Transportation Liaison at (916) 214-6144.

Sincerely,



LAURIE BERMAN  
Director

c: Vince Mammano, California Division Administrator, California Division, Federal Highway Administration  
Brian Annis, Secretary, California State Transportation Agency  
Ryan Chamberlain, District 12 Director, Caltrans

6. Letter from US Congressman Mike Levin to Controller Betty Yee, May 3, 2019.

MIKE LEVIN  
49th District, California

1026 LONGWORTH HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-3965

Congress of the United States  
House of Representatives  
Washington, DC 20515-0549

May 3, 2019

Betty T. Yee  
Controller  
California State Controller's Office  
300 Capitol Mall, Suite 1850  
Sacramento, California 95814

Dear Controller Yee,

I write to request that you expeditiously initiate an audit of the Transportation Corridor Agencies' (TCA) finances. I appreciate your strong leadership in promoting accountability and transparency for the State of California and local governments, and I believe that this effort is critical to the mission of the State Controller's Office.

As you may be aware, TCA is comprised of two Joint Powers Authorities that operate in Orange County. A 1987 state law allows TCA to build and manage toll roads throughout the county. TCA has been entrusted with operating four roads, which now constitute 20 percent of the county's limited-access highway system. The agency is currently pursuing plans to build another toll road in the 49th Congressional District but has faced multiple lawsuits alleging violations of public input and transparency laws.

On March 11, 2019, the *Los Angeles Times*<sup>1</sup> published a story outlining TCA's mismanagement of public funds while working to advance the toll road extension project. The story described instances of gross overpayments to consultants with little demonstrable benefit to the public, including payments totaling \$230,000 for consultants to read "emails of news from transportation stories" and \$14,000 for the agency's own consultants to meet with each other.

It is critical that the State of California investigate these allegations given TCA's status as a state-authorized joint powers authority and recipient of funds under the State Transportation Improvement Program and State Highway Operation and Protection Program (SHOPP). I am concerned that the *Times* story could ultimately lead to evidence of greater impropriety.

Once again, thank you for your leadership. I look forward to working with you on this important matter.

Sincerely,



MIKE LEVIN  
Member of Congress

<sup>1</sup> Elmahrek, Adam. March 11, 2019. "The battle to tame O.C. traffic now rages over fees for high-priced consultants." *Los Angeles Times*.

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The Transportation Corridor Agencies- Are They Taking Their Toll On Orange County?

7. Letter from Cottie Petrie-Norris to Chairman Rudy Salas, Joint Legislative Audit Committee, January 13, 2020.

STATE CAPITOL  
P.O. BOX 942949  
SACRAMENTO, CA 95834-0074  
(916) 319-2074  
FAX (916) 319-2174  
DISTRICT OFFICE  
19712 MACARTHUR BOULEVARD  
IRVINE, CA 92612  
(714) 908-2100  
FAX (714) 968-2104  
E-MAIL  
Assemblymember.Petrie-Norris@assembly.ca.gov



COMMITTEES  
CHAIR, ACCOUNTABILITY AND  
ADMINISTRATIVE REVIEW  
APPROPRIATIONS  
JUDICIARY  
REVENUE AND TAXATION  
VETERANS AFFAIRS

January 13, 2020

JAN 13 2020

The Honorable Rudy Salas, Chair  
Joint Legislative Audit Committee  
1020 N Street, Room 107  
Sacramento, CA 95814

Dear Chair Salas:

I respectfully request that the Committee approve an audit of the Transportation Corridor Agencies (TCA) to determine if it is meeting its mission and operating efficiently and effectively.

The TCA was formed in 1986 as a joint-powers authority (JPA) by Orange County and its cities, following planning that began in the 1970's to identify the need for new highways. A series of laws were enacted subsequently that created the system.

In 1987, SB 1413 (Seymour) authorized toll roads in Orange County. SB 1437 (Seymour) authorized the collection of fees. These bills envisioned that only upon a finding that there is no other adequate funding available from federal, state or other sources, the JPA could toll the roads to pay off the then \$1 billion price tag, then turn the roads over to the state as free roads like Interstate 5.

The TCA has constructed state routes 73, 133, 241, and 261, and currently operates approximately 51 miles of toll roads primarily in south Orange County. Recent figures show debt obligations for the Foothill/Eastern system at an estimated \$2.4 billion in outstanding principal and totaling an estimated \$6.5 billion in principal and interest from 2018-2053. For the San Joaquin Hills system, debt obligations are at an estimated \$2.1 billion in outstanding principal and totaling an estimated \$5.1 billion in principal and interest from 2018-2050.

TCA has increased tolls and extended its debt repeatedly to keep pace with expenses and debt payments—at least 12 times since 1996 on the San Joaquin Hills alone. TCA's debt has more than doubled between 1998 and 2018; from \$2.9 billion in 1998 to \$6.5 billion on 2018. The tolls on both corridors are now among the highest in the nation per mile. TCA continues to collect significant development impact fees on some of the nation's most expensive housing for freeways it has not built or has cancelled.

Despite the fact that TCA has not completed any new highways in nearly 20 years, the agency continues to spend vast amounts on administration, public relations, and freeway designs that

  
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## The Transportation Corridor Agencies- Are They Taking Their Toll On Orange County?

are at times inconsistent with other regional and local transportation plans. Additionally, there are concerns that TCA's planning and development authority is duplicative and redundant. Orange County Transportation Authority (OCTA) serves as Orange County's transportation commission under state law, which gives OCTA the power to plan, design, construct, and operate highways in partnership with the State, the County of Orange, and cities throughout Orange County.

Recent reports have raised concerns about TCA's management of public funds. The Los Angeles Times on March 11, 2019, uncovered that TCA officials allowed for the potential misuse of millions of dollars in public funds. This took the form of payments to politically-connected consultants with little demonstrable benefit to the public. Examples from the Times report include payments totaling \$230,000 for TCA's outside consultants to read "emails of news from transportation stories; evaluate reporter perspectives" and \$14,000 for one meeting for the agency's own consultants to meet with each other.

In order to increase transparency and to assess the efficiency and effectiveness of TCA, I request a review of the following:

1. TCA's revenues, expenditures, projections and debt financing including, but not limited to determining the propriety and extent of charges for TCA's consulting and lobbying agreements.
2. TCA's long-term plans related to managing debt and turning over the roads to the state to become freeways, including if these plans are reasonable and in the best interest of residents of Orange County and Southern California.
3. The accuracy of TCA's estimated project costs and demand in growth and revenues for any SR-241 extension or alternative(s).
4. TCA's charitable contributions, including if these contributions are consistent with the TCA mission.
5. If the TCA has identified how it will use the developer fees and the relationship between these uses and the developments on which the developer fees are imposed.

Thank you for your consideration of this audit request. If you have any questions, please contact me or Scott Herbstman, Chief Consultant of the Assembly Accountability and Administrative Review Committee.

Sincerely,



Cottie Petrie-Norris  
California State Assemblywoman  
74<sup>th</sup> Assembly District

8. Partial transcript of Anthony Beall's address at the March 12, 2020 TCA BoD meeting. These comments start 2:28:35 into the meeting.

"I'd be remiss if I didn't mention the process and how difficult it has been. And I'm saddened, but not surprised, about how difficult it was because that's politics. In my opinion there were leaders, a few of them, the whole No Toll Road group, and even some of our Orange County state legislatures who had obvious personal political agendas that were willing to divide our community for the sake of their personal political agenda at the expense of doing what's right for the overall community. Our goal, as evidenced by all the work we have done, shows this agency has worked to the best of our ability to make fully informed decisions to benefit the entire region, improve mobility and the quality of life for all residents. What was their stated goal? And we saw it time and again. They wanted to abolish the TCA. They wanted to stop this process before it began. That's wrong. In my opinion that is a failure of leadership. It divides communities; it divides a region. Members of this Board of Directors faced threats and intimidation and terrible false personal attacks. A number of us have been accused of corruption, taking payoffs, conflicts of interest, utter incompetence, and threatened with and served with recall papers. One of our speakers said today, 'You've all been put through a firing squad.' Nothing could be further from the truth. That is a fact. And that is no surprise. We all saw the scope of work that came from the public affairs or lobbyists that were hired by the City of San Clemente. It was a scorched earth policy by design. Many of us have personally paid that price. In my opinion that was a shameful failure of leadership. But as one of speakers, Aaron Byers, said today, 'Voters spoke loudly and clearly on Tuesday, when the state assemblyman was voted out of office.'"