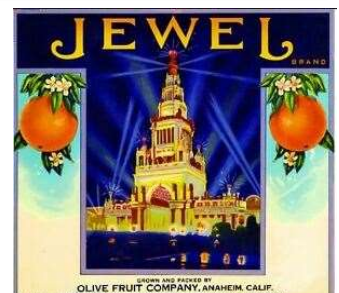
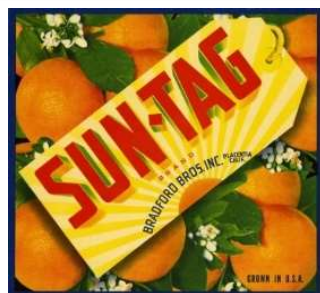
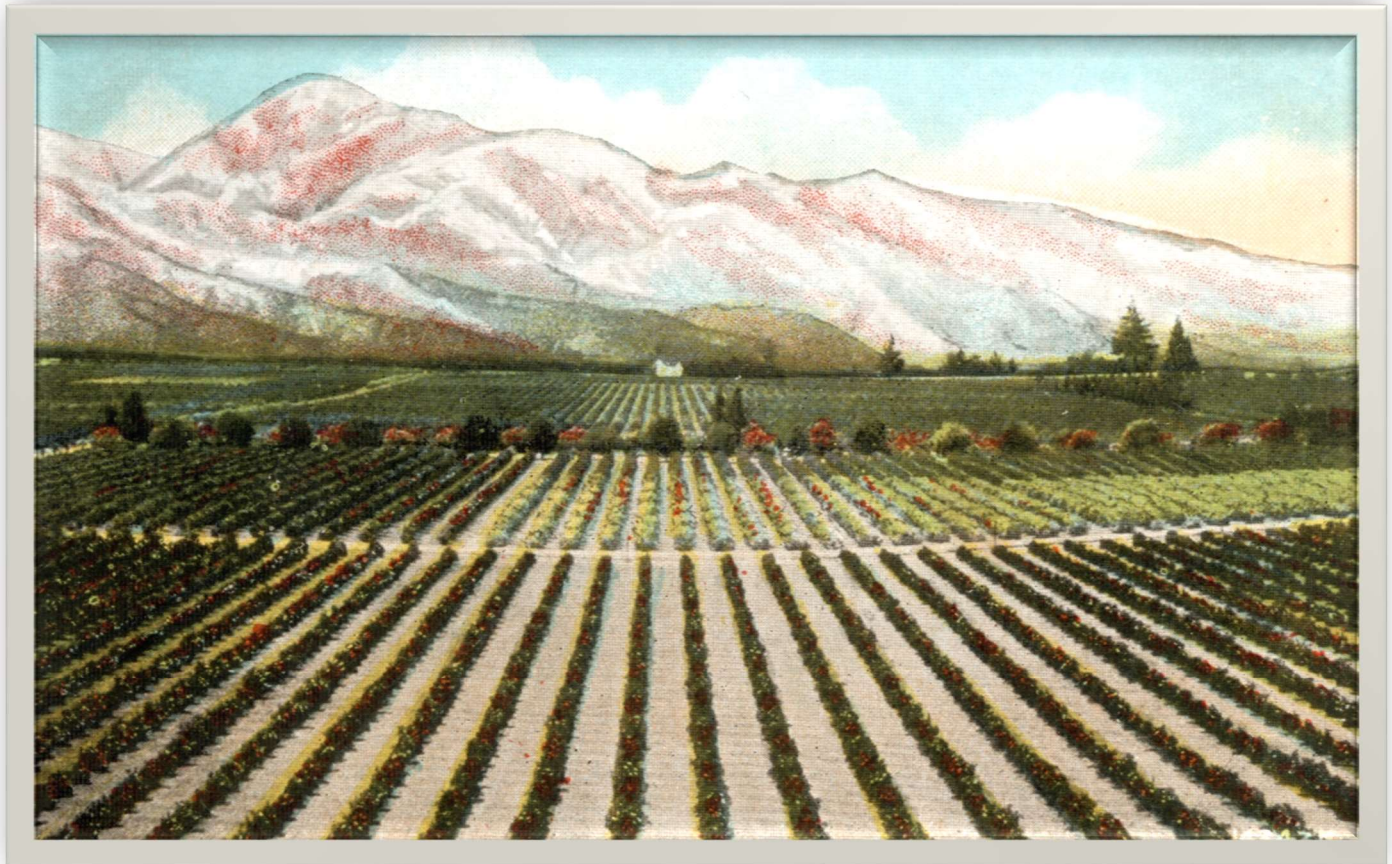




ORANGE COUNTY GRAND JURY

2019 – 2020

FINAL REPORT



Cover Art

“Oranges as far as the eye can see in Orange County, Cal”

“Old Mission orange crate label”

“Sun-Tag orange crate label”

“Blue Vase orange crate label”

“Jewel orange crate label”

Photos courtesy of Orange County Archives



ORANGE COUNTY GRAND JURY

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July 1, 2020

The Honorable Kirk Nakamura
Superior Court of California, County of Orange
700 Civic Center Drive West
Santa Ana, CA 92701

Dear Judge Nakamura:

On behalf of the 2019-2020 Orange County Grand Jury, I am pleased to present this, the Grand Jury's Final Report. While we initiated a number of civil investigative efforts on a wide range of topics, this book is a compilation of the seven reports the jury produced during its term.

As you are aware, this year's Grand Jury faced many challenges. For multiple, fully understandable, and unexpected personal reasons, resignations from the original panel resulted in all nine available alternates being offered the opportunity to serve. Because of the 9-week hiatus in our work caused by the pandemic and county-wide secession of most court operations, there were three reports we were unable to complete and one, the "Cybersecurity Report," that we felt was so important, that even though a portion of the investigation could not be accomplished, we agreed to publish what we found. Despite these issues, all of our panel members brought their unique and widely varied backgrounds, experiences, education, and skill sets to bear and cooperated in a manner and with a sense of camaraderie rarely seen to jointly provide the material contained in this volume. I cannot praise my fellow jury members enough for the diligence, professionalism, and integrity they showed in accomplishing the interviews, investigative research, and cooperative writing and computer program usage skills needed to arrive at where we are today.

In compliance with the State of California requirement that the Grand Jury investigate the prisons, we believe all will benefit if the county accepts and implements the recommendations cited in our report "Maternal Health Care While Incarcerated."

Besides our civil investigations, this year's panel conducted seven indictment hearings of criminal cases brought by the Orange County District Attorney's office and overseen by Brett Brian, Sr. Deputy District Attorney, who ably assisted us with the legal issues we raised as a part of this process. These hearings occurred throughout our term and ranged from one to four days in length with one spanning many weeks between sessions.

We are grateful for your support and that of Honorable Erick Larsh, Assisting Presiding Judge, and the guidance you both provided us regarding our service on the panel, especially with regards to our hiatus and your support and encouragement upon our return to complete this term. We also wish to thank the Honorable Cheri Pham, the judge who read and approved our reports before being released to the public.

The Honorable Kirk Nakamura
July 1, 2020
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My fellow Grand Jury members all need to thank and recognize the valued, professional, and sound leadership provided by Donald Noble, our initial foreperson, who was unable to complete his service when we returned from the mandated hiatus in our operations. Special appreciation should be cited for Sharon Durbin, Senior Deputy County Counsel, for her sound legal advice in the review of our many proposed investigations and the advice she afforded us through most of our work to more fully understand the various laws and county offices and agencies we were questioning. We would especially like to recognize and thank James D. P. Steinmann, Deputy County Counsel, who, after Ms. Durbin retired, provided the legal review and comment essential for us to provide "legal correctness" in our investigative reports.

Then too, it would have been impossible for this year's panel to have accomplished its work without the extraordinary support of Theda Kaelin, Grand Jury Coordinator and Joyce Mwangi, Executive Administrative Assistant, who provided the interface between the Grand Jury and the outside world for such activities as acting as our liaison to the courts, the district attorney, county counsel, the many city and county agencies and county offices, elected officials, and public/private companies we dealt with, handling all procedural activities regarding our correspondence, arranging interviews, and the many other administrative tasks essential for the Grand Jury to carry out its functions.

There are two tasks usually carried out annually by each Grand Jury: that of throughout the year of recruiting public support to obtain volunteers to serve on the next year's panel from amongst those chosen for petit jury service; and usually in late May or early June after candidates have been selected, conduct three or four days of training of the incoming panel as to the many tasks, procedures, and restrictive guidelines needed to be followed to accomplish the service. Since the hiatus compressed the timeline for the sitting Grand Jury to complete our reports and accomplish our work, we were unable to provide the incoming Grand Jury with the training required by state statute. Therefore, we wish to express our gratitude to Birgit Sale, foreperson of the 2018-19 Grand Jury, who organized the three day training program for the incoming jury, Doug Gillen and the California Grand Jury Association who provided the 2-day program they provide in 54 of California's 58 counties, and Stan Ness and the Grand Jury Association of Orange County for their support in this effort.

Then too, we appreciate the work done on our behalf by Kostas Kalaitzidis, The Grand Jury Public Information Officer, whose office was responsible in part for recruiting many of us to do this job.

Finally, the Grand Jury needs to thank the many members of the court's Grand Jury Recruitment and Selection Committee who in early 2019, took the time to review the nearly 150 applications for Grand Jury service, then conducted the interviews of the 90 citizens selected out of that group, and then chose the 30 of us who they felt were the best qualified to serve the people of Orange County over this past year. The past and present members of this year's panel all agree it has indeed been an honor, privilege, and pleasure to serve.

Respectfully submitted,



Steven G. Belasco, Foreperson
2019-2020 Orange County



Kris Beard



Ken Blake



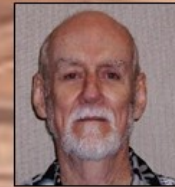
Andy Brooks



Troy Botello



Joe Boyd



Charles Bryant



JoAnne Chung



Keith Dawson



Don Nobel
Foreperson



Steve Belasco
Foreperson

Not Pictured: Stephanie Janji



El Wells



Greg Tettermer



Bill Repp



Tina Marie Pletcher



Laree Lopez



Pannkaj Kummur



Barbara Hodgson



Chris Evans

Members of the 2019-20 Grand Jury

Foreperson	Steven (Steve) Belasco
	Donald (Don) Noble
Foreperson Pro Tem	Elbert (El) Wells
Secretary	Gregory (Greg) Tettermer
Sergeant at Arms	Andrew (Andy) Brooks
Secretary Pro Tem & Evidence Recorder Members	Kenneth (Ken) Blake
	Kris Beard
	Troy Botello
	Joe Boyd
	Charles Bryan
	JoAnne Chung
	Chris Evans
	Barbara Hodgson
	Keith Dawson
	Stephanie Janji
	Pannjar Kummar
	Laree Lopez
	Tina Marie Pletcher
	William (Bill) Repp
Former Members	Dena Becker
	James Cast
	Linda Frederickson
	Linda Hudak
	Maxine Marcus
	David (Dave) Meekhof
	Christine (Chris) Prince

Orange County Grand Jury 2019-2020

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Reports in Order of Issuance

1. Electric Vehicles Are Here – Is Orange County All Charged Up?

The Grand Jury discovered that AB 1236, a law passed in 2015 (to assist all who had purchased an electric vehicle and wanted to recharge it at home) requiring compliance by all California jurisdictions by 2017, had not yet been implemented by eight of Orange County's 34 cities. The report explains the reasoning behind AB 1236 and calls on the eight cities to amend their ordinances to comply with the state code.

2. What's happening with the Historic Tustin Hangars?

In 1994 when MCAS Tustin closed as part of the BRAC program, a portion of the facility to include the north hangar was turned over to Orange County and the remainder to include the south hangar went to the City of Tustin. Because different methods of conveyance from federal property to local reuse and the subsequent collapse of a portion of the roof on the north hangar, Orange County has not moved forward on any of its plans to reuse the property. Since Tustin's Economic Development Conveyance authorizes a much broader latitude of action, the Grand Jury recommended that Orange County release its claim to the property in favor of the City of Tustin's reuse opportunity.

3. Cybersecurity

The security of Orange County's many computer systems and capabilities and the need for public access and potential interference or criminal actions harming the county's ability to manage its many activities, was the primary reason for this study. The findings suggest that there are programs or county functions that could be open to cyber-attack and recommendations were made to investigate and correct those perceived deficiencies.

4. Maternal Health Care While Incarcerated

In compliance with its mandate to provide one report on the prisons in the county, the Grand Jury reviewed the problems and treatment of women who were incarcerated while they were pregnant. The Grand Jury found that there were multiple problems involving inconsistent medical care, non-compliance with established custodial policy, and other issues requiring attention by the agencies who oversee the care and wellbeing of those pregnant women in custody.

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

Comprised of two Joint Powers Authorities, the TCA manages “The Toll Roads” a transportation network comprising SR-73, 133, 241, and 261. In response to multiple citizen complaints alleging mismanagement and other serious allegations, the Grand Jury undertook an investigation of these two JPAs. The report concludes that there is indeed some level of mismanagement and a lack of communication and openness in the activities and responsibilities between the administrative arm of the JPAs and their respective elected governing boards of directors. The Grand Jury also found that the agencies appear to be seeking ways to expand their activities and pursue and fund projects beyond their statutory mandates (since no one audits or controls their activities) with the aim to perpetuate their existence beyond the sunset stipulated in the California Streets and Highways code. Finally, the Grand Jury determined that despite multiple letters spanning more than 15-months by federal and state elected officials asking for an external audit of these JPAs by state and local governing or oversight agencies, no such audit has yet occurred.

6. OC Recycling: Doing It the Right Way

Over the past 30-years, the state legislature has passed many pieces of legislation seeking to reduce the amount of trash being sent to land-fills through recycling. To inspect how the county is complying with these laws, the Grand Jury visited all three county land-fills and one privately operated collection, processing, and transfer facility. They examined the waste processing methodology being followed by ten OC cities and Orange County Waste & Recycling for unincorporated areas with the cities selected based on a number of representative factors and the contracts these cities have with their waste haulers. The Grand Jury found that there is a significant lack of competition for this work. In addition, they found that the cities placed a very high reliance on their hauler with regards to public education on recycling (which appears to be spotty and incomplete at best), that there is minimal recycling being done at multi-family residence facilities, and all cities rely on the hauler’s reports to certify their city’s compliance with applicable state codes.

7. Protecting Those Who Protect and Serve

There are more than 4,500 sworn police officers in Orange County who serve in both the OC Sheriff’s Department and in the separate forces of 21-cities. While all forms of employment have some level of stress associated with the job, police work is one of the most stressful in the country. This report investigates the peer support programs in each agency and to a limited extent, their level of compliance with AB 1117 which was passed unanimously and became state law on 1 January 2020.

Electric Vehicles Are Here – Is Orange County All Charged Up?



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Electric Vehicles Are Here- Is Orange County All Charged Up?

SUMMARY

In its continuing effort to be a leader in reducing carbon dioxide (CO₂) emissions from roadway vehicles, California seeks to encourage the use of electric cars and trucks. California Assembly Bill (AB) 1236¹ was enacted to require cities, counties, or cities and counties to streamline the Level 2 charger installation permitting process. Original equipment recharging units, Level 1, 120-volt, for these vehicles renew at a nominal rate of about 4 miles of range per hour of recharge, whereas Level 2, 240-volt residential chargers are nearly six times faster.² The higher grade, faster chargers require certified, professional electricians to assure correct installation and must include proper grounding, conductor ampacity, and circuit breaker size. The Grand Jury investigated city and county compliance with this new mandate, found that 8 of the 34 Orange County cities have yet to comply, and interviewed representatives of these eight cities to evaluate each cities' progress toward compliance.

REASON FOR THE STUDY

The earth has recently undergone a noticeable increase in worldwide mean temperatures.³ Greenhouse gases are generally accepted as a significant contributor⁴ with some estimates showing transportation accounts for 29% of man-made greenhouse gas emissions in the United States (US).⁵ In light of this, California is encouraging the use of electric vehicles (EVs). California Assembly Bill 1236⁶ was created with "... the legislative intent to encourage the installation of electric vehicle charging stations (EVCS) by removing obstacles to, and minimizing costs of, permitting for charging stations" The bill, signed into law October 8, 2015, requires that by September 30, 2017, every city "... adopt an ordinance consistent with the goals and intent of this section, and create an expedited, streamlined permitting process for electric vehicle charging stations." Specifically, the legislation requires that, among other things:

- Each city shall adopt a checklist of all requirements with which EVCS shall comply to be eligible for expedited review.

¹ Codified as Government Code Section 65850.7

² Saxton, Tom, *Understanding Electric Vehicle Charging*, 2011, <https://pluginamerica.org/understanding-electric-vehicle-charging/>

³ *2019 was 2nd hottest year on record for Earth say NOAA, NASA*, January 15, 2020, <https://www.noaa.gov/news/2019-was-2nd-hottest-year-on-record-for-earth-say-noaa-nasa>

⁴ *The Causes of Climate Change*, <https://climate.nasa.gov/causes/>

⁵ *Transportation and Climate Change*, <https://www.epa.gov/transportation-air-pollution-and-climate-change/carbon-pollution-transportation>

⁶ Text of the resulting California code is found in the Appendix section.

- The checklist and required permitting documentation shall be published on a publicly accessible internet web site, if the city, county, or city and county has an internet web site.
- Each city shall allow for electronic submittal of a permit application and associated documentation, and shall authorize the electronic signature on all forms, applications, and other documentation in lieu of a wet signature by an applicant. (However, if the city determines that it is unable to authorize the acceptance of an electronic signature on all forms, applications, and other documents in lieu of a wet signature by an applicant, the entity shall state the reasons for its inability to accept electronic signatures and acceptance of electronic signatures shall not be required.)
- Lastly, besides the cities, the unincorporated county communities can obtain permits through the County Public Works department. Authority for this procedure rests with Ordinance No. 16-018 of the County of Orange, California building code, page 18 as follows: “Section 120. An expedited review and permit issuance process shall be provided for Electrical Charging Stations and simplified forms for submittal will be made available on the County’s website by September 30, 2017.”

Therefore, the Grand Jury sought to understand how Orange County cities and the county are implementing the requirements of Assembly Bill 1236, and how they are encouraging public education about installation of Level 2 EVCS at private residences.

METHOD OF STUDY

The Grand Jury thoroughly reviewed California Assembly Bill 1236 (Local Ordinance: EVCS).

The Grand Jury reviewed the websites of all 34 Orange County cities and that of the County to determine if they meet the requirements of AB 1236. Specifically, the Grand Jury:

- Reviewed city municipal codes to determine if they are updated per AB 1236.
- Searched for EV charger information on the cities’ and county’s websites.
- When EV charger information was found, it was reviewed to determine if it fully complied with the AB 1236 mandates.
- If EV charger information was not found, a knowledgeable city official was interviewed.
- In addition, the Grand Jury sought to determine if they were aware of grants available to offset the costs to install public charging stations.

An initial website canvas revealed the cities of Fountain Valley, Garden Grove, Laguna Beach, Laguna Woods, Lake Forest, Placentia, Seal Beach, and Yorba Linda had not implemented any features in AB 1236. The Grand Jury subsequently interviewed persons with civic responsibilities, i.e. mayors, city managers or public works managers, of these cities to ascertain

whether these officials were familiar with AB 1236 and its primary mandate to eliminate confusion in obtaining upgraded permits for private residence, condominium, and business location Level 2 EV charging station installation.

Additionally, the Grand Jury was interested in determining how committed cities are to EV charging, how actively they assist the average citizen in this matter, and whether they provide a convenient website checklist for public familiarization and implementation.

BACKGROUND AND FACTS

Electric Vehicles in California

EV sales in California, the largest green market in the US, led the nation in 2019, outpacing prior years' quarters by substantial margins (13% the first three months over that of 2018 alone).⁷ Additionally, the Edison Electric Institute estimates overall US numbers of EVs will approach twenty million within a decade, requiring roughly 9.6 million charge ports to facilitate that expansion.⁸ Although one model car, the Tesla 3, is primarily responsible for this surge through impressive sales, several other manufacturers are quickly catching up with thirteen major brands now competing for buyers' interest.⁹

California also boasts an export of EVs manufactured within the state outselling its petroleum products, pistachios, and semi-conductors. At a staggering revenue of \$3.4 billion, EVs hold an impressive 8th place in what the state produces.^{10,11}

Battery science, too, is advancing in step with several improvements in this unique industry. Adding to battery storage volume is the regenerative aspect of EV braking systems that recovers energy of acceleration.¹² IBM, for example, has recently introduced new battery technology virtually free of the heavy metals cobalt and nickel. Not only are the newer batteries lighter and less prone to fires, they have greatly expanded charge capacity, extending the range of some EVs

⁷ Descant, Skip: *California Continues to Lead in Electric Vehicle Adoption: Future Structure*, April 10, 2019, <https://www.govtech.com/fs/transportation/California-Continues-to-Lead-in-Electric-Vehicle-Adoption.html>

⁸ Edison Electric Institute *Celebrates 1 Million Electric Vehicles on U.S. Roads*, November 30, 2018, <https://www.eei.org/resourcesandmedia/newsroom/Pages/Press%20Releases/EEI%20Celebrates%201%20Million%20Electric%20Vehicles%20on%20U-S-%20Roads.aspx>

⁹ Ibid.

¹⁰ Workman, Daniel: *California's Top 10 Exports*, December 2, 2019; <http://www.worldstopexports.com/californias-top-10-exports/>

¹¹ Busch, Chris: *California EV Exports, Already Valued at \$3 Billion, Expected to Hit \$3.4 Billion in 2019*, September 23, 2019, <https://www.forbes.com/sites/energyinnovation/2019/09/23/california-electric-vehicle-exports-already-valued-at-3-billion-in-2018-expected-to-hit-35-billion-in-2019/#9721c664e278>

¹² Toll, Micah: *Regenerative Braking: How it Works in EVs*, April 24, 2018, <https://electrek.co/2018/04/24/regenerative-braking-how-it-works/>.

to nearly 600 miles.¹³ The salient factor remains, however, EV batteries require recharging, and any effort to encourage or promote ease to accomplish this benefits everyone.

Mile for mile, an EV is less harmful to the environment than a vehicle powered directly by carbon based fossil fuel. “Today, an average EV on the road in the U.S. has the same greenhouse emissions as a car getting 80 miles per gallon.”¹⁴ Though the volume of carbon dioxide produced to generate recharging power for EV’s is impressive, over the lifetime of two similar size vehicles (150,000 miles), the car with the battery represents an 84% reduction in recognized air pollutants in contrast to emissions of an internal combustion engine.¹⁵

Though certain tax incentives are scheduled to incrementally expire after EV sales reach a triggering number (200,000 qualifying vehicles per manufacturer) and availability of desired vehicles to decline due to popularity, it remains a certainty that the number of Level 2 charger permit requests will swell toward saturation. The introduction of higher capacity battery packs (200 miles+, more than adequate for 99% of casual drivers¹⁶) has also greatly reduced so-called “range anxiety” many EV drivers endured with earlier models. These and other factors predict battery power for domestic transportation is no longer a vision but a reality.¹⁷

Private Chargers

In order to ease the installation and funding of private EVCS, the California legislature passed Assembly Bill 1236. The convenience of speedy recharging of private EVs at one’s residence or public location is one of the major selling points stressed at place of purchase. Orange County cities have every incentive to ease the permitting process for installation of Level 2 EVCS. Over eighty percent of EV owners charge their vehicles this way.¹⁸ Though the vast majority of EVs are passenger cars and sport utility vehicles, it is recognized battery powered light duty trucks and even motorcycles fall into this classification of ‘private’ transportation.

¹³ Young-Hye, Na: *Free of Heavy Metals, New Battery Design Could Alleviate Environmental Concerns*, IBM Research Blog, December 18, 2019, <https://www.ibm.com/blogs/research/2019/12/heavy-metal-free-battery/>.

¹⁴ Mariacci, Silvio: *Charging an Electric Vehicle is Far Cleaner Than Driving on Gasoline, Everywhere in America*, Forbes on line, March 14, 2018, <https://www.forbes.com/sites/energyinnovation/2018/03/14/charging-an-electric-vehicle-is-far-cleaner-than-driving-on-gasoline-everywhere-in-america/#501683dd71f8>.

¹⁵ Silverstein, Ken: *Arguments Against Electric Vehicles Are Running On Empty*, Forbes on line, December 18, 2019, <https://www.forbes.com/sites/kensilverstein/2019/12/18/the-arguments-against-electric-vehicles-are-running-on-empty-especially-as-coal-fades-and-renewables-advance/#1ece71ec4d2e>.

¹⁶ Jouret, Guido: *Why Electric-Powered Mobility Is Finally Finding Traction*, Forbes, September 30, 2019, <https://www.forbes.com/sites/johnfrazer1/2019/09/30/why-electric-powered-mobility-is-finally-finding-traction/#642002846718>.

¹⁷ Barry, Keith: *New Long-Range, Affordable Electric Cars Coming Soon*, Consumer Reports, August 22, 2019.

¹⁸ Cheung, Philip: *Wheels*, New York Times; July 11, 2019.

Available Funding for Public Chargers

To assist in the proliferation of EVCS installations, financing assistance issued from the California State Treasury in the form of loans include those for design, development, purchase, and installation of EV charging stations by small businesses within California; loans may provide for up to 100% coverage to lenders on certain loan defaults should that occur. Borrowers may also individually qualify for rebates of 10-15% of the enrolled loan amount.¹⁹ Lenders include any chartered bank, savings association, certified Community Development Financial Institution, or credit union licensed and authorized to do business in California.²⁰

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 finding:

- F1. Eight Orange County cities, Fountain Valley, Garden Grove, Laguna Beach, Laguna Woods, Lake Forest, Placentia, Seal Beach, and Yorba Linda, have not fully complied with AB 1236 that requires cities to implement a streamlined process in obtaining permits to install EVCS and make it available to the public on their city websites, thus impeding residents' ease of installation of EVCS.

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 three recommendations to comply with the requirements of AB 1236:

- R1. Cities, that have not already done so, should update their municipal code to add an ordinance streamlining their EVCS permitting process by May 1, 2020. (F1)

¹⁹ Office of the State Treasurer (CA); *California Pollution Control Financing Authority*, <https://cbig.ca.gov/Government-Partners/California-Pollution-Control-Financing-Authority>.

²⁰ Ibid.

- R2. Cities, that have not already done so, should create a streamlined permit process for single family residences, multi-family residences and businesses to obtain permits to install EVCS that includes an easy to use checklist by May 1, 2020. (F1)
- R3. Cities, that have not already done so, should describe the streamlined EV charging installation permit application process and have the checklists and forms available on their website by May 1, 2020. (F1)

COMMENDATION

The 26 Orange County cities not mentioned in this report have complied with at least the basics of AB 1236, as has the County of Orange for unincorporated areas. The city of Irvine is a good example of a city that has fully complied. There is a page on that city's website dedicated to EV charging containing links to permit applications, a related Southern California Edison website, and a map of EVCS. This example may be used by cities that have not complied with AB 1236 to aid them in updating their processes and website. The city of Irvine is commended for fully implementing the mandates. Their web page can be found by searching "EV charging" or "EVCS" from the Irvine city website home page or navigating to the uniform resource locator (URL) below.

<https://www.cityofirvine.org/community-development/electric-vehicle-service-equipment-evse>

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

City Councils of the following cities:

Fountain Valley, Garden Grove, Laguna Beach, Laguna Woods, Lake Forest, Placentia, Seal Beach, Yorba Linda F1

Recommendations

City Councils of the following cities:

Fountain Valley, Garden Grove, Laguna Beach, Laguna Woods, Lake Forest, Placentia, Seal Beach, Yorba Linda R1, R2, R3

GLOSSARY

AB	Assembly Bill
CalCAP	California Capital Access Program
CALeVIP	California Electric Vehicle Infrastructure Project
CO ₂	Carbon Dioxide
CPCFA	California Pollution Control Financing Authority
DCFC	Direct Current Fast Charge
EV	Electric Vehicle(s)
EVCS	Electric Vehicle Charging Station(s)
EVSE	Electric Vehicle Supply Equipment
SCIP	Southern California Incentive Project
URL	Uniform Resource Locator
US	United States

APPENDIX

Assembly Bill No. 1236

CHAPTER 598

An act to add Section 65850.7 to the Government Code, relating to local ordinances.

[Approved by Governor October 08, 2015. Filed with Secretary of State

October 08, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1236, Chiu. Local ordinances: electric vehicle charging stations.

The Planning and Zoning Law, among other things, requires the legislative body of each county and city to adopt a general plan for the physical development of the county or city and authorizes the adoption and administration of zoning laws, ordinances, rules, and regulations by counties and cities. Existing law, the Electric Vehicle Charging Stations Open Access Act, prohibits the charging of a subscription fee on persons desiring to use an electric vehicle charging station, as defined, and prohibits a requirement for persons to obtain membership in any club, association, or organization as a condition of using the station, except as specified.

The bill would require a city, county, or city and county to approve an application for the installation of electric vehicle charging stations, as defined, through the issuance of specified permits unless the city or county makes specified written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The bill would provide for appeal of that decision to the planning commission, as specified. The bill would provide that the implementation of consistent statewide standards to achieve the timely and cost-effective installation of electric vehicle charging stations is a matter of statewide concern. The bill would require electric vehicle charging stations to meet specified standards. The bill would require a city, county, or city and county with a population of 200,000 or more residents to adopt an ordinance, by September 30, 2016, that creates an expedited and streamlined permitting process for electric vehicle charging stations, as specified. The bill would require a city, county, or city and county with a population of less than 200,000 residents to adopt this ordinance by September 30, 2017. The bill would authorize the city, county, or city and county, in developing the ordinance, to refer to guidelines contained in a specified guidebook. The bill would also authorize the adoption of an ordinance that modifies the

checklists and standards found in the guidebook due to unique conditions. By increasing the duties of local officials, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Digest Key

Vote: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: YES

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 65850.7 is added to the Government Code, to read:

65850.7.

(a) The Legislature finds and declares all of the following:

(1) The implementation of consistent statewide standards to achieve the timely and cost-effective installation of electric vehicle charging stations is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern.

(2) It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of electric vehicle charging stations and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install electric vehicle charging stations.

(3) It is the policy of the state to promote and encourage the use of electric vehicle charging stations and to limit obstacles to their use.

(4) It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of electric vehicle charging stations by removing obstacles to, and minimizing costs of, permitting for charging stations so

long as the action does not supersede the building official's authority to identify and address higher priority life-safety situations.

(b) A city, county, or city and county shall administratively approve an application to install electric vehicle charging stations through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install an electric vehicle charging station shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the electric vehicle charging station will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city, county, or city and county makes a finding, based on substantial evidence, that the electric vehicle charging station could have a specific, adverse impact upon the public health or safety, the city, county, or city and county may require the applicant to apply for a use permit.

(c) A city, county, or city and county may not deny an application for a use permit to install an electric vehicle charging station unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(d) The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city, county, or city and county.

(e) Any conditions imposed on an application to install an electric vehicle charging station shall be designed to mitigate the specific, adverse impact upon the public health or safety at the lowest cost possible.

(f) (1) An electric vehicle charging station shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) An electric vehicle charging station shall meet all applicable safety and performance standards established by the California Electrical Code, the Society of Automotive Engineers, the National Electrical Manufacturers Association, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(g) (1) On or before September 30, 2016, every city, county, or city and county with a population of 200,000 or more residents, and, on or before September 30, 2017, every city, county, or city and county with a population of less than 200,000 residents, shall, in consultation with the local fire department or district and the utility director, if the city, county, or city and county operates a

utility, adopt an ordinance, consistent with the goals and intent of this section, that creates an expedited, streamlined permitting process for electric vehicle charging stations. In developing an expedited permitting process, the city, county, or city and county shall adopt a checklist of all requirements with which electric vehicle charging stations shall comply to be eligible for expedited review. An application that satisfies the information requirements in the checklist, as determined by the city, county, or city and county, shall be deemed complete. Upon confirmation by the city, county, or city and county of the application and supporting documents being complete and meeting the requirements of the checklist, and consistent with the ordinance, a city, county, or city and county shall, consistent with subdivision (b), approve the application and issue all required permits or authorizations. However, the city, county, or city and county may establish a process to prioritize competing applications for expedited permits. Upon receipt of an incomplete application, a city, county, or city and county shall issue a written correction notice detailing all deficiencies in the application and any additional information required to be eligible for expedited permit issuance. An application submitted to a city, county, or city and county that owns and operates an electric utility shall demonstrate compliance with the utility's interconnection policies prior to approval.

(2) The checklist and required permitting documentation shall be published on a publicly accessible Internet Web site, if the city, county, or city and county has an Internet Web site, and the city, county, or city and county shall allow for electronic submittal of a permit application and associated documentation, and shall authorize the electronic signature on all forms, applications, and other documentation in lieu of a wet signature by an applicant. In developing the ordinance, the city, county, or city and county may refer to the recommendations contained in the most current version of the "Plug-In Electric Vehicle Infrastructure Permitting Checklist" of the "Zero-Emission Vehicles in California: Community Readiness Guidebook" published by the Office of Planning and Research. A city, county, or city and county may adopt an ordinance that modifies the checklists and standards found in the guidebook due to unique climactic, geological, seismological, or topographical conditions. If a city, county, or city and county determines that it is unable to authorize the acceptance of an electronic signature on all forms, applications, and other documents in lieu of a wet signature by an applicant, the city, county, or city and county shall state, in the ordinance required under this subdivision, the reasons for its inability to accept electronic signatures and acceptance of an electronic signature shall not be required.

(h) A city, county, or city and county shall not condition approval for any electric vehicle charging station permit on the approval of an electric vehicle charging station by an association, as that term is defined in Section 4080 of the Civil Code.

(i) The following definitions shall apply to this section:

(1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by a city,

county, or city and county on another similarly situated application in a prior successful application for a permit.

(2) “Electronic submittal” means the utilization of one or more of the following:

(A) Email.

(B) The Internet.

(C) Facsimile.

(3) “Electric vehicle charging station” or “charging station” means any level of electric vehicle supply equipment station that is designed and built in compliance with Article 625 of the California Electrical Code, as it reads on the effective date of this section, and delivers electricity from a source outside an electric vehicle into a plug-in electric vehicle.

(4) “Specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

SEC. 2.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Electric Vehicles Are Here- Is Orange County All Charged Up?

What's Happening with the Historic Tustin Hangars?



GRAND JURY 2019-2020

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SUMMARY

When former Marine Corp Air Station (MCAS) Tustin closed in 1994, the County of Orange, supported by the City of Tustin, applied for and received approval from the Department of the Navy to develop Parcel 18 through a no-cost Public Benefit Conveyance (PBC). The 85-acre property includes the North “blimp” Hangar, one of two similar historical structures on the former base, which was proposed to be preserved as the centerpiece for a county regional park (see Figure 1).

The County of Orange has spent significant time and resources over the past twenty-five years attempting to generate plans to redevelop the property as a regional park, yet has been unable to obtain the necessary approvals for an economically viable plan within the constraints of the PBC. Unexpected changes in the original conditions, including the Navy’s prolonged and continued cleanup of on-site contaminants and the North Hangar’s partial roof collapse in 2013, have made redevelopment potentially more complicated and costly.

As the Local Reuse Authority, the City of Tustin received the majority of the property within former MCAS Tustin as part of an Economic Development Conveyance (EDC), including the historic South Hangar, which was slated to be demolished. The EDC allows the City of Tustin to generate income from property sales or leases to offset infrastructure and redevelopment costs. In 2013, the City of Tustin commenced licensing the South Hangar for interim uses, and has more recently developed plans and budgeted funds for initial repairs and renovation to begin in 2020. The planned retention of the South Hangar significantly reduces the potential economic viability or public benefit to be gained from also retaining the North Hangar.

Based on altered conditions, the City of Tustin appears to be in a more advantageous position than the County to redevelop the 85 acres within Parcel 18 as it is the Local Reuse Authority, and could potentially accept the property through its existing Economic Development Conveyance and re-plan/redevelop the property in joinder with currently owned adjacent properties. The Department of the Navy has expressed its concern to the County that absent a viable plan and path forward on the transfer of Parcel 18 to the County, the Navy will re-engage the National Park Service (NPS) and the City of Tustin to discuss an alternative conveyance mechanism to meet the objectives of the original agreement and the Tustin Legacy Specific Plan.

The County once envisioned a unique regional park with a grand testament to Orange County’s military history at its center. However, it has been ineffective in its planning efforts and unexpected circumstances have diminished the potential economic viability and public benefit to be gained from a county regional park in this location. Despite altered conditions and the lack of an approved plan, there is no indication that the County has reevaluated the fundamental benefit of remaining involved in development of Parcel 18. Best practices for any policy making body

includes reevaluating decisions made when circumstances change. It is time for the County of Orange to reevaluate its ability to provide additional benefit to county residents from its involvement with the redevelopment of Parcel 18 as a county regional park.



Image clipped from Google Earth¹

Figure 1. Aerial view of the historic Tustin hangars
North Hangar and Parcel 18 are in the foreground. South Hangar is in the background

¹ Google Data LDEO – Columbia, NSF, NOAA Data SIO, NOAA, U.S. Navy, NGA, GEBCO Landsat/Copernicus

REASON FOR THE STUDY

The reason for this investigation is to provide a current review of the County's plan to redevelop the 85-acre parcel within the former MCAS Tustin as a county regional park. It has been over twenty-five years since the County's Public Benefit Conveyance application was approved by the Department of the Navy, yet no redevelopment plans have been approved and the property continues to deteriorate as surrounding properties become developed. The Orange County Grand Jury's intent is to facilitate a path forward that would be most beneficial to the residents of Orange County.

METHOD OF STUDY

In conducting its investigation, the Grand Jury completed extensive document review and online research pertaining to the history and reuse of Parcel 18 within the former MCAS Tustin property. The Grand Jury interviewed ten individuals including representatives from the City of Tustin and Orange County who provided invaluable information to the Grand Jury in its investigation.

BACKGROUND AND FACTS

MCAS Tustin Base Closure

As part of the military base realignment and closures in the 1990's, Orange County applied for and received approval in 1994 for a no-cost Public Benefit Conveyance of Parcel 18, containing 85 acres within the former MCAS Tustin (Figure 2).² Sites and buildings obtained through the PBC program are required to be used exclusively for parks and recreation purposes and any income in excess of repairs, rehabilitation, restoration, and maintenance can only be used for public historic preservation, park, or recreational purposes.



Image from park concept report to County of Orange, 2011, prepared by Tait and Associates

Figure 2. Location map showing park location within former MCAS Tustin

² See Appendix for additional background and detail on base closure and history.

Parcel 18 contains the historic North Hangar, also known as Hangar 1 or Building 28, along with the historically significant control tower and helium storage buildings (Figure 3). The County intended to redevelop the property as a county regional park, retaining the historic North Hangar as a centerpiece.



Image from park concept report to County of Orange, 2011, prepared by Tait and Associates

Figure 3. Parcel map showing Parcel 18 and improvements.

The County's role in preserving historical structures was the impetus behind its interest in acquiring, redeveloping, and maintaining the property as a county regional park. Without the

retention of historic elements, the flat infill development site does not embody the typically unique characteristics of regional recreational facilities within the recreation element of the County's general plan, nor does it offer more than what is available in nearby local parks. The proposed park lies within Supervisorial District 3, which currently has a larger share of parks in comparison to most of the other districts. Moreover, there appears to be limited need or county-wide political support to spend funds for additional recreational venues in this district.

The City of Tustin, as the Local Reuse Authority, approved and supported Orange County's PBC application, and adopted the county regional park as a feature of the Tustin Legacy Specific Plan.³ The City of Tustin entered into a no-cost Economic Development Conveyance (EDC) with the Department of the Navy to acquire the majority of the former MCAS Tustin property. The EDC allows the City of Tustin the ability to generate income from land sales and leases to offset infrastructure and development costs. Additionally, in its position as the Local Reuse Authority, the City of Tustin has authority over the review and approval of any reuse or redevelopment of property within the former MCAS Tustin under the Tustin Legacy Specific Plan.

A Memorandum of Agreement (MOA), signed in 1999, between the Department of the Navy, the California State Historic Preservation Office, Orange County, and the City of Tustin, sets out the stipulations and mitigation measures which the County and the City of Tustin would be required to meet if the hangar complexes are conveyed *without* historic preservation restrictions. Orange County and Tustin completed those mitigation measures in 2009. As a result, the Navy determined the MOA was no longer in effect and the future disposal of the property is not encumbered by a historic preservation covenant.⁴

³ See References #5 - Tustin Legacy Specific Plan

⁴ See References #15 - MOA Stipulations

Figure 2-1 Land Use Plan

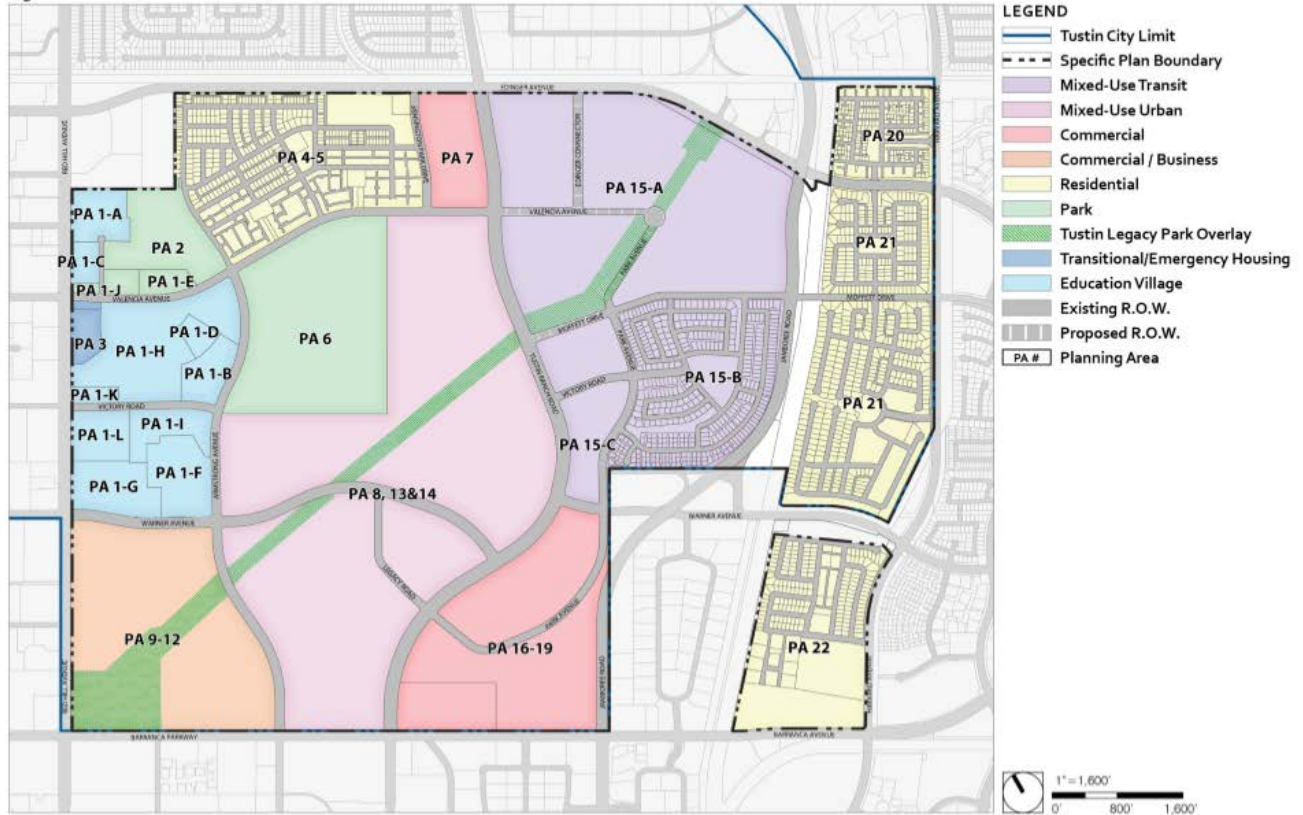


Figure 4. Tustin Legacy Specific Plan, Page 2-4. Parcel 18 identified as PA 6

Parcel 18 is designated as Planning Area 6 within the Tustin Legacy Specific Plan (Figure 4), and its designated land use is as a county regional park. Section 3.9 of the Tustin Legacy Specific Plan sets out the Development Standards and Use Regulations pertaining to Planning Area 6 which regulate the redevelopment of the property. Surrounding land uses include existing residential development to the north, undeveloped commercial designated land to the south and east, and institutional uses to the west. A private high school is currently under construction to the east of Parcel 18.

The City of Tustin is the owner of the adjacent commercially zoned vacant property to the east and south of Parcel 18 and would be in a more advantageous position than the County to potentially re-plan future uses in jinder with this larger land area. Changes to the land use of Parcel 18 could have potential negative impacts on adjacent properties which were planned in

anticipation of a regional park being developed. Any proposed changes to the existing recreational park land use to more intensive uses would require revising the Tustin Legacy Specific Plan which would most likely include additional environmental impact assessments and public hearings.

In May 2002, the City of Tustin received a Lease in Furtherance of Conveyance, (LIFOC), on the majority of the property within the former MCAS Tustin, including the property containing the historic South Hangar, known as Hangar 2. The South Hangar was slated for demolition, and remained “moth-balled” with no activity through 2012. The county also considered accepting Parcel 18 through a LIFOC from the Navy at the same time, but they decided not to pursue a lease for unknown reasons.

In the original planning for the reuse of MCAS Tustin, the County of Orange also received approval for a PBC of a parcel designated as Disposal Site 2, which is an approximate 10-acre site to the northwest of Parcel 18, adjacent to Armstrong Avenue. Due to delays in transfer and altered conditions from the original planning, the County subsequently agreed to withdraw its application for the PBC of Disposal Site 2 as part of a multi-party agreement with the City of Tustin and the South Orange County Community College District. The City of Tustin and Department of the Navy agreed to amend their agreements to include Disposal Site 2 into the City of Tustin's EDC. Based on this precedent, it is anticipated that the City of Tustin will be able to amend its EDC to incorporate Parcel 18 should the County not proceed with its plans or should it withdraw its PBC application.

County's Conceptual Plan

In February 2012, the Orange County Board of Supervisors approved a conceptual plan for the Regional Park and submitted a Program of Utilization (POU) to the National Park Service (NPS) (Figure 5). The County's conceptual plan for the POU included retention of the historic North Hangar. The POU also included a private partnership comprised of USA Water Polo and the Anaheim Ducks, who were proposing to lease areas within the future park. The POU had a development cost estimate of \$69,000,000 and annual maintenance costs of \$1,700,000 in 2011 dollars. The submitted POU never received the required approval from the NPS.

What's Happening with the Historic Tustin Hangars?

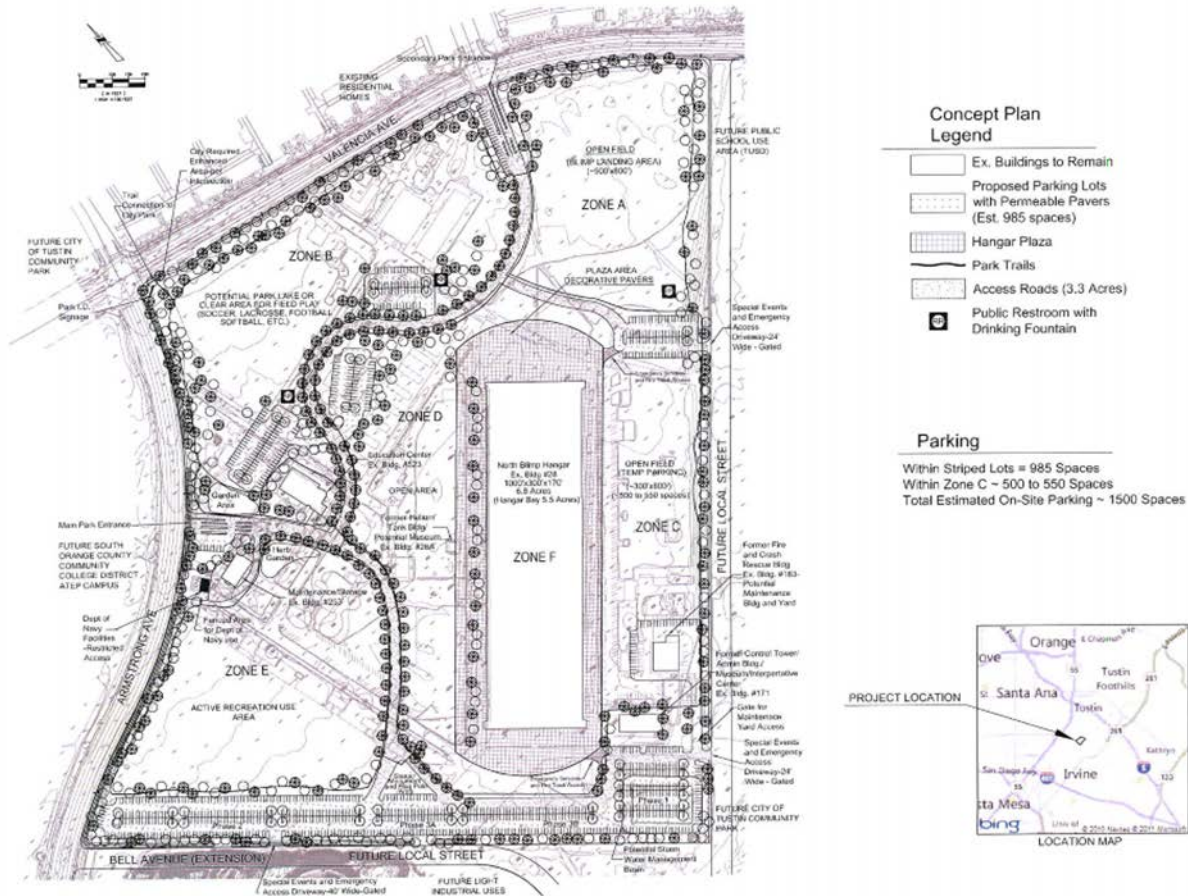


Image from Orange County Program of Utilization submittal to National Parks Service, 2012

Figure 5. County proposed Program of Utilization, 2012

The preliminary financing plan forwarded to the NPS as part of the POU submittal indicated there appeared to be viable financial support to design and construct the park at that time. The source for repayment of the proposed bond debt was assumed to be Orange County Parks' property tax apportionment revenue of approximately \$9,800,000, which was to become available in 2016. The County has made no modification to its program of utilization or submittal to the NPS. Prospective tenants have moved on to other locations and the anticipated financing is no longer in place.

In October 2013, a portion of the North Hangar's roof collapsed (see Figure 1). As a result, the structure was "red-tagged" and not permitted to be occupied. The damage was temporarily stabilized by the Department of the Navy in 2014, at a cost of \$3.2 million. The Navy's annual contracted cost to maintain the North Hangar structure is approximately \$350,000. The Department of the Navy is not legally obligated to repair the hangar, and the structure is only required to be in a stabilized condition at the time of transfer. The County of Orange has sought no engineering assessments or cost estimates to repair the damage to the North Hangar.

An investigation and assessment of the historic South Hangar, conducted in September 2017 by consultants to the City of Tustin, indicated potential hazardous materials within the structure. The hazardous materials identified were asbestos, lead, biological contaminants, and groundwater contaminants which may result in vapor intrusion issues. These same hazardous materials would be assumed to exist within the North Hangar and mitigation of these hazardous materials could add significant costs to either retention or demolition of either of the hangar structures.

The County of Orange has retained multiple land use consultants to assess and provide development concepts for the property over the past 25 years, including alternative redevelopment conceptual plans without retaining the North Hangar. None of the potential development concepts were considered to be economically or legally viable within the constraints of a PBC. The cost to demolish the North Hangar and its ancillary structures to clear the property would be significant, with preliminary estimates in the range of \$15-25 million. Without the retention of the historic structures, and with limited potential for recreational uses to generate income, there does not appear to be significant offsetting financial or public benefit to the residents of Orange County.

The County of Orange has indicated an interest in applying to the National Park Service to alter the conveyance mechanism to a Historic Monument PBC, yet has made little to no progress towards submitting that application. Although a Historic Monument PBC may include revenue producing activities to support the historic monument, all income exceeding the cost of repair, rehabilitation, and maintenance must be used for public historic preservation, park or recreational purposes. The application for *Obtaining Real Property for Historic Monument Purposes*⁵ requires that some historical elements be maintained, and requires extensive details on the proposed Preservation Plan, Use Plan, and Financial Plan. The County currently has no viable proposals to meet the preservation, use, and financial requirements of a Historic Monument PBC.

Department of Navy Base Realignment and Closure

The Department of the Navy's Base Realignment and Closure Team, (BRAC), along with its environmental Base Clean-up Team and Restoration Advisory Board, (RAB) for MCAS Tustin, are the lead agencies in reviewing future uses and transfers of property within MCAS Tustin. The Department of the Navy's BRAC team operates extraction wells and equipment on Parcel 18, and continues to oversee the monitoring, testing, and clean-up of Chemicals of Concern in on-site soils and groundwater. The Navy will continue to monitor and clean-up groundwater contaminants until cleared by regulatory agencies, regardless of when the transfer of ownership of the property may ultimately occur.

⁵ See References #13 - Public Benefit Conveyance – Historic Monument Application

What's Happening with the Historic Tustin Hangars?

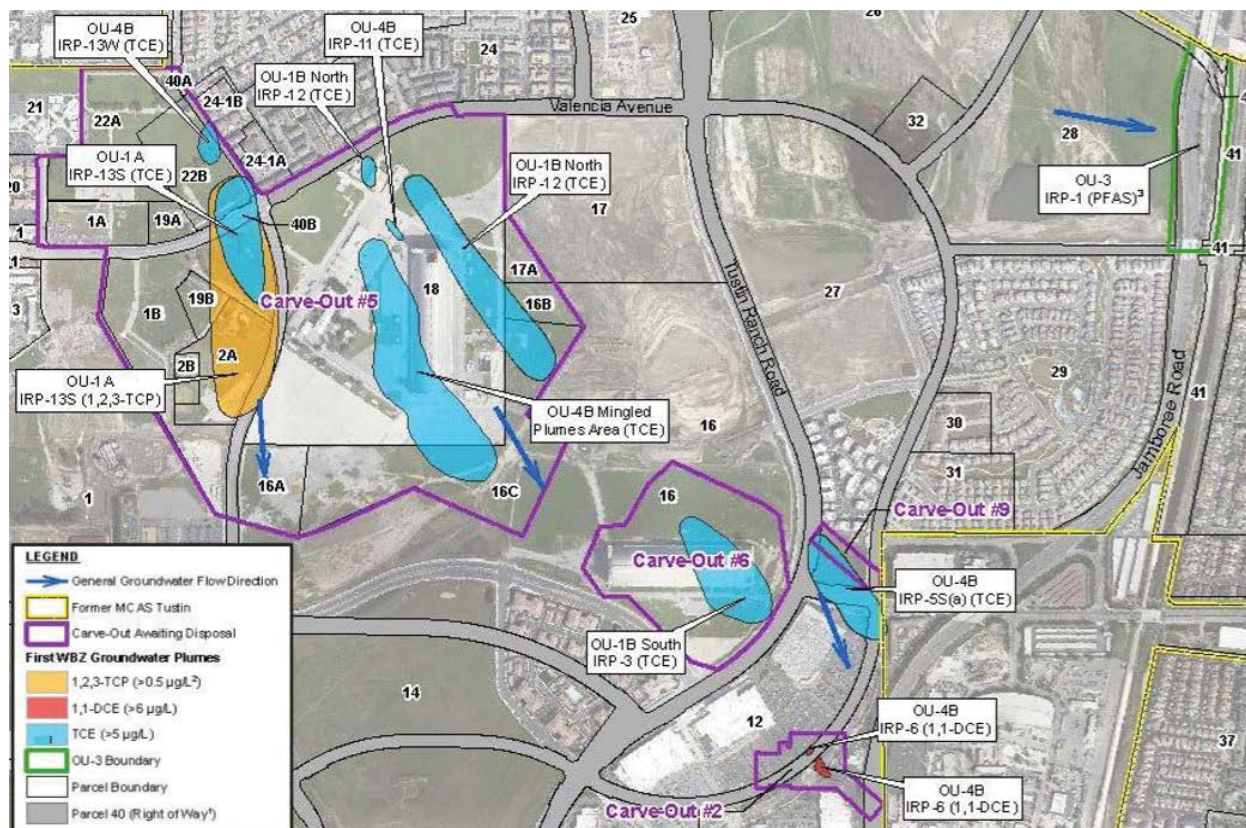


Image from PowerPoint presented at RAB meeting, Tustin October 2018. See references #10

Figure 6. Ground contamination plumes 2018

Minutes from the October 2019 meeting of the RAB indicate that the Navy is continuing to monitor, test, and clean groundwater plumes, and levels of potential contaminants of concern continue to be reduced.⁶ Current contaminants of concern identified on the property include 1,2,3-TCP and PFAS. Figure 6 is a map of identified groundwater plumes on the MCAS site. Parcel 18 with the North Hangar is identified as Carve-Out 5, and the Tustin Legacy area with the South Hangar is identified as Carve-Out 6. The recently identified PFAS substances have yet to receive clarification of contaminant levels by the regulating authorities, including the California Department of Toxic Substances Control and will continue to be monitored and reported on by the RAB.

The RAB is also responsible for establishing any institutional controls, deed restrictions and any Covenants to Restrict Use of the Property (CRUP) documents. Potential institutional controls, deed restrictions and CRUP documents for Parcel 18 are unknown at this time. Conditions may include various measures such as grading limitations, vapor barriers, hazardous material abatement, storm water runoff management, and other remediation and/or mitigation measures.

⁶ See References #10 - Navy RAB

These restrictions could limit the extent of future development and add additional costs and time to the redevelopment of the property.

On March 30, 2018, the Navy issued the draft Findings of Suitability to Transfer #10 (FOST #10), for Carve-Out 5 (which includes Parcel 18), and Carve-out 6 on former MCAS Tustin. Draft FOST #10 summarizes how transfer requirements and notifications have been satisfied and that the parcels are environmentally suitable for transfer. The draft FOST indicated that finalization of the transfer was anticipated by August 2018. However, the identification of newly emergent PFAS contaminates in 2018 has delayed the Navy's transfer timeframe. The Navy is currently coordinating with the appropriate regulatory agencies, the City of Tustin, and other stakeholders to develop a strategy to further assess PFAS impacts to groundwater. The Navy currently indicates that it anticipates a final FOST in early to mid-2021.

Extended delays in the site clean-up and in the fee title conveyance from the Navy have made it challenging for the County to develop plans and attract potential development partners. The lack of clarity on potential institutional controls and deed restrictions which will be placed on the redevelopment of Parcel 18 make it difficult to plan future uses and costs. While delays in the Navy's environmental clean-up have impacted transfer timelines for most properties within Tustin Legacy, these delays have not halted the City of Tustin's plans as it continues to complete planning and site preparations on property still owned by the Navy in anticipation of future conveyance.

City of Tustin's South Hangar

In 2013, the City of Tustin re-evaluated the use of the South Hangar and began issuing licensing agreements for temporary uses. The City of Tustin currently maintains a website marketing the South Hangar with an advertised rate of \$9,000/day⁷ and is currently open to proposals for use. The City of Tustin indicates that the South Hangar was utilized approximately 43 times in the period from 2013-2019 (avg. 7 users/year) with a total gross revenue generated of approximately \$1,000,000 over the six-year period. The interim uses were primarily for film/advertising production and community events. The City of Tustin currently has no economically viable proposals from prospective long-term tenants.

In 2017, the City of Tustin retained consultants to lead an extensive investigation and engineering assessment of the historic South Hangar structure. The resulting report, produced in September 2017, indicated that the South Hangar was in relatively good condition and, in fact, was in the best condition of the five remaining hangars which the team of experts had inspected. The pre-design phase of the consultant's contracted work was completed in the fall of 2018 and the design phase, which includes construction documents for permitting, is due to be finalized in

⁷ See References #8 - City of Tustin, Tustin South Hangar Rental

2020. The City of Tustin indicates that the plans are due to be submitted to the Tustin City Council for approval in the first quarter of 2020.

The City of Tustin indicates that it has spent approximately \$680,000 on capital improvements⁸ to the South Hangar through June 30, 2019, and have an additional \$4,300,000 requested in FY 2019-2020 for truss repair and utility connections to improve the functionality and safety of the hangar structure. An additional \$10,000,000 in capital improvements for the South Hangar is included in the City's Capital Improvement Program for FY22-23 and is dependent on the timing of income from licensing and future land sales. Tustin's planned retention of the South Hangar significantly reduces the potential economic viability or public benefit to be gained from retaining the North Hangar.

Recent Communication

The Department of the Navy has recently urged the County to explore the option of converting the hangar portion of the property from a Park PBC, into a Historic Monument PBC which allows limited revenue generating activities compatible with retention of the structure.⁹ A Historic Monument PBC requires that all income exceeding the cost of repair, rehabilitation, and maintenance must be used for public historic preservation, park, or recreational purposes.

Although the County has attempted to meet with the NPS to discuss the option of converting portions of the property into a Historic Monument PBC, no progress has been made. The application to obtain property from the NPS for Historic Monument purposes requires extensive plans and details including a Preservation Plan, a Use Plan, and a Financial Plan.¹⁰ The County does not currently have a viable plan for a Historic Monument PBC, yet has indicated an interest in identifying potential development partners through the Request for Proposals process.

On March 8, 2018, prior to issuance of Draft FOST #10, the Department of the Navy and the County met to discuss the transfer. At that time, the Department of the Navy expressed its concern in writing that altering the current conveyance mechanism is not inconsequential and will cause substantial delays in the transfer. The Navy was informed by both the City of Tustin and County that the two are not coordinated in their efforts. The County indicated they have no further direction from the Board of Supervisor beyond the 2013 Program of Utilization. The Department of the Navy indicated in a March 27, 2018 follow-up letter to the County, that absent a path forward, the Department of the Navy will re-engage the National Park Service and the City of Tustin to discuss an alternative conveyance approach to meet the objectives of the Reuse Plan.

⁸ See References #7 – Tustin Capital Improvement

⁹ See References #14 – Requirements for Public Benefit Conveyance.

¹⁰ See References #13 – Public Benefit Conveyance - Historic Monument Application

In October 2019, the City of Tustin, notified the County and the Department of the Navy that delays in advancing the County's regional park plans and transfer have resulted in unmaintained and unsafe conditions on Parcel 18. The City of Tustin stated that there have been numerous incidents on the property involving trespassing, vandalism and suspicious activity calls resulting in Tustin Police Department response. They have expressed that the unmaintained condition of the property is not a sustainable situation for the surrounding community.

FINDINGS

Pursuant to *California Penal Code Sections 933 and 933.05*, the Grand Jury requires (or, as noted, requests) 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 entitled "What's Happening with the Historic Tustin Hangars" the 2019-2020 Orange County Grand Jury has arrived at five principal findings, as follows:

- F1. The County of Orange has explored numerous planning options and development proposals regarding Parcel 18 within former MCAS Tustin over the past twenty-five years, yet has been ineffective in its efforts and has not been able to produce an approved economically viable plan within the constraints of its Park Public Benefit Conveyance.
- F2. Although the County of Orange has indicated an interest in applying to the National Park Service to alter their conveyance mechanism to a Historic Monument PBC, it has made limited progress and currently has no economically viable proposals within the constraints of a Historic Monument PBC.
- F3. The City of Tustin commenced licensing the historic South Hangar for interim uses in 2013 and has recently moved forward with its plans to renovate and retain the South Hangar. The planned retention of the South Hangar significantly limits the potential economic viability and public benefits of also retaining the North Hangar.
- F4. The City of Tustin appears to be in a more advantageous position than the County to redevelop the 85 acres within Parcel 18 as it is the Local Reuse Authority, and could potentially accept the property through its existing Economic Development Conveyance and re-plan/redevelop the property in joinder with adjacent property under its ownership.
- F5. The Navy has stated to the County of Orange that absent a viable plan and path forward on the transfer of Parcel 18 to the County, the Navy will re-engage the National Park Service and the City of Tustin to discuss an alternative conveyance mechanism to meet the objectives of the original agreement and the Tustin Legacy Reuse Plan.

RECOMMENDATIONS

Pursuant to *California Penal Code Sections 933 and 933.05*, the Grand Jury requires (or, as noted, requests) 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 entitled “What’s Happening with the Historic Tustin Hangars?” the 2019-2020 Orange County Grand Jury makes the following two recommendations:

- R1. Given the altered conditions since the initial planning, the County of Orange should reevaluate its ability to provide additional value or benefit to county residents from its involvement with the redevelopment of Parcel 18 as a county regional park, and the Board of Supervisors should determine within 90-days of the release of this report whether to proceed with or withdraw from its PBC application. (F1 thru F5.)
- R2. As the Local Reuse Authority, the City of Tustin should commence initial steps and planning with the Department of the Navy for incorporating Parcel 18 into its Economic Development Conveyance to meet the objectives of the Tustin Legacy Specific Plan. (F3 and F4.)

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 “Comments and Reports on Grand Jury Recommendations.”

“(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 or 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....”

§933.05 “Response to Grand Jury Recommendations – Content Requirements; Personal Appearances by Responding Party; Grand Jury Report to Affected Agency.”

“(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.”

Responses Required

Comments to the Presiding Judge of the Superior Court in compliance with *California Penal Code Section 933.5* are required from:

Findings

County of Orange
City of Tustin

F1, F2, F3, F4, F5
F3, F4

Recommendations

County of Orange
City of Tustin

R1
R2

REFERENCES

County of Orange

1. Orange County Original Concepts for Park
<https://www.ocparks.com/civicax/filebank/blobdload.aspx?BlobID=21919>
2. Orange County Parks Website – Regional Park at Former MCAS Tustin
<http://www.ocparks.com/about/projects/tbh>

City of Tustin

3. **EDC/LIFO**C (Between USA and City of Tustin) and **Memorandum of Agreement** Among the Department of the Navy the California State Historic Preservation Officer and the Advisory Council on Historic Preservation for the Disposal and Reuse of Marine Corps Air Station Tustin Orange County California.
<https://www.tustinca.org/DocumentCenter/View/1162/Navy-City-Economic-Development-Conveyance-Compressed-PDF?bidId=>
4. Photo Essay: Marine Corp Air Station & North Hangar, Tustin – Closed. May 30, 2013
<https://www.avoidingregret.com/2013/05/photo-essay-marine-corp-air-station.html>
5. Tustin Legacy Specific Plan
<https://www.tustinca.org/DocumentCenter/View/635/Tustin-Legacy-Specific-Plan-PDF>
6. The Tustin Hangars Titans of History
<http://www.militarymuseum.org/NAS-Santa-Ana-History.pdf>
7. Tustin Capital Improvement Program Fiscal Year 2019-2020
<https://www.tustinca.org/DocumentCenter/View/2458/Capital-Improvement-Program-Fiscal-Year-2019-Through-2020-PDF>
8. Tustin South Hangar Rental
www.tustinca.org/766/Renting
9. Historic Preservation Video/DVD to emphasize Lighter-than-air operations
<https://www.tustinca.org/765/Tustin-Hangars>

Department of Navy

10. Navy RAB meeting minutes 2018

https://www.bracpmo.navy.mil/content/dam/bracpmo/california/former_marine_corps_air_station_tustin/pdfs/meetings/2018rab/20181011_Tustin_RAB_Meeting_Summary.pdf

11. Federal Register

<https://www.govinfo.gov/content/pkg/FR-2001-03-02/html/01-5127.htm>

12. Ground Contaminations Plumes 2015

<https://ca-tustin.civicplus.com/DocumentCenter/View/1149/Carve-Out-Areas-and-Groundwater-Plumes-PDF>

National Park Services

13. Public Benefit Conveyance – Historic Monument Application (Blank)

[http://files.cityofportsmouth.com/files/mcintyreproject/Historic%20Monument%20Application%20\(May%202016\).pdf](http://files.cityofportsmouth.com/files/mcintyreproject/Historic%20Monument%20Application%20(May%202016).pdf)

14. Requirements for Public Benefit Conveyance through National Parks Service

- a. **Public Parks and Recreational Areas:** Title 40 U.S.C. 550 (e) ... recommended by the Secretary of the Interior as being needed for use as a public park or recreation area. Deeds conveying any surplus real property disposed of under this authority shall provide that the property shall be used and maintained for the purpose for which it was conveyed in perpetuity...
- b. **Historic Monuments:** Title 40 U.S.C. 550(h) ... authorized by Secretary of the Interior as suitable and desirable for use as a historic monument for the benefit of the public... in conformity with the recommendation of the National Park Advisory Board established under section 3 of the Act of Congress approved August 21, 1935 (16 U.S.C. 463) and only so much of any such property shall be so determined to be... necessary for the preservation and proper observation of its historic features. Property conveyed for historic monument purposes may... be used for revenue producing activities to support the historic monument. Deeds conveying... property under this authority shall be used and maintained for the purposes for which it was conveyed in perpetuity...

Historic Preservation

15. MOA Stipulations required by Federal Advisory Council on Historic Preservation and California Office of Historic Preservation.

- i. **Stipulation IA.** Navy has submitted HABS report to required parties. Report HABS No. CA-2707 is on file with the Library of Congress.
- ii. **Stipulation IB.** Navy has provided all available plans/drawings etc. for all facilities on site to local curation facility and to Tustin.

- iii. **Stipulation II.** After both Orange County and City of Tustin conducted comprehensive marketing efforts, no viable adaptive re-use of the hangars could be substantiated, therefor Stipulation III was required.
- iv. **Stipulation III.** Parties were required to provide three things:
 - 1. A written history of the LTA base. (See “Tustin Hangars, Titans of History”)¹¹
 - 2. Interpretive Video/DVD to emphasize the Lighter-than-air operations. City of Tustin hosted a one-time distribution and outreach program for the documentary video on September 1, 2009. Copies are available from the City¹².
 - 3. Interpretative Exhibit. On display at Tustin City Hall.

Based on **fulfillment of all required stipulations** in the MOA, the Navy in a letter to both Federal and State Historic Preservation Agencies has determined that the MOA is no longer in effect with respect to historic preservation. (Letter dated November 3, 2009)

¹¹ See Reference #6 – Titans of History

¹² See Reference #9 – Historic Preservation Video/DVD

GLOSSARY

BoS	Board of Supervisors
BRAC	Base Realignment and Closure
COC	Chemicals of Concern
CRUP	Covenants to Restrict Use of the Property
DoN	Department of the Navy
DTSC	California Department of Toxic Substances Control
EDC	Economic Development Conveyance
FOST	Finding of Suitability to Transfer
HABS	Historic American Buildings Survey
LIFOC	Lease in Furtherance of Conveyance
LRA	Local Reuse Authority
MCAS	Marine Corps Air Station
MOA	Memorandum of Agreement
NPS	National Parks Service
PBC	Public Benefit Conveyance
PFAS	Per- and polyfluoroalkyl substances
PFOS	Perfluorooctanesulfonic acid
POU	Program of Utilization
RAB	Restoration Advisory Board
1,2,3-TCP	Trichloropropane

APPENDIX

MCAS Tustin Hangar Timeline Overview

The following timeline is a simplified, abbreviated list of events or occurrences shown in chronological order. We include it, hoping that for some, a quick look at the actions by the various players involved over time will aid in understanding how we got from the time of the base closure to where we are now.

County of Orange	Orange
City of Tustin	Green
Department of Navy	Blue
National Parks Service	Purple

1991

Closure announced, Marine Corps Air Station (MCAS) Tustin. City of Tustin named as the Local Reuse Authority (LRA).¹³

April 18, 1994

Department of Interior National Parks Service (NPS): Letter from NPS to Navy indicating an application by Orange County for an urban regional park on the 85-acre site. It requires the county to submit a detailed general development plan and implementation schedule for the park. It may be as a historic monument transfer Title 40 U.S.C. §550(h) or a park and recreation transfer Title 40 U.S.C. §550 (e).

1995

The county reveals concept for a regional park. OC Parks PowerPoint “Regional Park at former MCAS, Tustin.

1996/98

Reuse Plan for MCAS Tustin approved by city of Tustin in 1996, amended in 1998. This later becomes the Tustin Legacy Specific Plan. Ordinance 1482 07-18-17, Adopted October 31, 1996, Amended September 8, 1998

1999

Tustin applies to the Navy for a no-cost Economic Development Conveyance (EDC) for 75% of MCAS.

1999

¹³ See References #11 – Federal Register

Base formally closes in July. Environmental documents, deeds and leases are prepared for conveyance 1999-2002. Base closes July 2, 1999. Source: Federal Register Volume 66, Number 42 (Friday, March 2, 2001).¹⁴

May 10, 2002

City of Tustin receives 75% of MCAS through an EDC via fee or lease. 25% goes to public or nonprofit entities. Source: Agreement Between the United States of America and city of Tustin, California for the Conveyance of a Portion of the Former Marine Corps Air Station Tustin. Execution Version May 10, 2002.

1999

Orange County received approval of a Public Benefit Conveyance (PBC) of Parcel 18 containing Hangar 28 and Bldg. 28A for an 84-acre Regional park through the National Parks Service.

2009

County and city indicate compliance with **mitigation measures required by MOA**. Hangars are still subject **historic preservation** standards until **conveyed** by the Navy.

2002-2012

South Hangar sits in “moth-balled” condition. No planned uses; slated for demolition.

December 27th, 2011

Consultant's report “Concept Plan for Regional Park at MCAS Tustin” received by Orange County December 27, 2011.

2012

January 12, BOS approved a Conceptual Plan for a park including Historic Hangar 28. Finance was directed to find a way to finance outside the General Fund. Estimated Cost 69 million dollars. Maintenance annually 1.7 million dollars of which 400k is for the hangar.

February 28, 2012

Board of Supervisors approved a **Program of Utilization (POU)** on February 28, 2012. It was submitted to National Parks Service and **was not approved**.

2013

Tustin begins licensing South Hangar for civic and private events, filming, storage etc.

October 1, 2013

Feasibility Study by consultants to OC Parks. (Basic concepts; no details, no applications submitted.)

October 2013

Hangar 1 roof collapse; December 24, 2013 Navy awarded contract to **stabilize** the damaged hangar.

February 2014

Navy begins Stabilization of Hangar.

¹⁴ See References #11 – Federal Register

What's Happening with the Historic Tustin Hangars?

April 7, 2014

A revised consultant's proposal is submitted to OC for Re-Use Study of Hangar 1.

April 17, 2014

(OC Register Article) The hangar is being prepared to be conveyed from the Navy to the county. It's included in the county's plans for an 84.5-acre regional park, but following October's incident, county officials have expressed some reluctance to take on a potentially expensive repair project. "It's all up in the air, depending on the cost to fix it," said a county supervisor. "I don't want that blimp hangar destroyed or taken down, but we really need to know realistically what it's going to cost to repair that hole."

April 24, 2014

Parks communication to District Supervisor: OC Parks has immediately decided to delay finalization of the General Development Plan until concerns about integrity of the hangar and whether and at what cost the hangar roof could be repaired. Revised consultant's proposal (**April 7, 2014**) is submitted to OC for Re-Use Study of Hangar 1.

May 9, 2014

County solicits consultant's assessment report.

May 12, 2014

County asks Navy for access to hangar 1 for consultant's assessment work.

June 17, 1 2014

City of Tustin: following North Hangar collapse, Tustin retains consultant to perform an assessment and reuse study for **South Hangar**.

December 2016

County gets consultants to provide conceptual drawings for a park with and without the hangar. "Development Concepts" PowerPoint presentation to Orange County dated December 2016

September 2017

Consultant's "Final Report – Tustin Hangar 2 Conditions Assessment and Reuse Study". Volume 1. Prepared for City of Tustin. Board of Supervisors Agenda Item 14, September 19, 2017. Professional Services agreement with consultant to perform architectural and engineering design services related to Maintenance, repairs and voluntary upgrades of Hangar 2.

September 9, 2017

Tustin City Council approves purchase of a 185' boom lift to repair and maintain Hangar 2 on a regular basis. Agenda Report Item 14 September 19, 2017. City also approves two phases I-\$1,004,410.00, phase II 5 million appropriation for FY 17-18 from land sale proceeds for maintenance, repair and upgrade of Hangar 2.

October 17, 2017

OC Board of Supervisors has closed session with the Department of the Navy and city of Tustin.

December 11, 2017

What's Happening with the Historic Tustin Hangars?

Navy to Real Estate CEO – Request for meeting regarding Parcel 18 PBC. Navy anticipates FOST will be ready for review early summer 2018. If county contemplates a change beyond existing PBC, talk to NPS as soon as possible. County has not been able to attend meetings to discuss a way forward.

February 21, 2018

County acknowledges receipt of letter referenced above. Is glad to coordinate and refers to contact person.

March 8, 2018

Orange County RE CEO team met with Navy BRAC team to discuss transfer of Parcel 18.

March 27, 2018

Navy to Orange County Real Estate CEO – We are ready to convey Parcel 18 to National Parks Service by September of 2018. Conveyance to **Tustin** is desirable for any scenarios beyond the original PBC. Navy is concerned that changes to the original conveyance mechanism will cause substantial delays in the transfer date. Any scenario that changes the reuse plan needs to be vetted with the LRA (Tustin). Both city and county recently informed us the two parties are not coordinated on this effort. “Absent a viable path forward, the Navy will re-engage National Parks Service and the city of Tustin to discuss and alternative conveyance approach to meet the objectives of the reuse plan”.

March 30, 2018

Navy issues Draft FOST 10 setting out their findings of suitability to transfer. EPA defers to State (DTSC) for review of environmental issues.

April 30, 2018

County to Navy and NPS – No additional direction from BoS since the previously approved **POU (2012)**. County states it is concerned about the condition of the North Hangar and ground contamination PFAS and PFOS.

May 23, 2018

Navy to Real Estate CEO – Navy believes a reassessment of the financing plans for the 2013 POU is prudent. Suggest you talk to NPS and Tustin if there is not an approved plan in place. Also, the Navy provides the reports showing levels of PFAS and PFOS.

August 4, 2018

Orange County gets consultant to provide conceptual plans for a park with hangar. (No details and no attempts to gain the approval of NPS).

September 11, 2018

Real Estate CEO letter to BOS: earlier this year, Navy said it intended to issue a FOST in September of 2018. CEO states County has not been able to determine if revenue is there to make the proposals viable.

They need to pursue the Historic Structure option to find greater economic opportunities. CEO asks BoS if they want to accept the property.

2018

Tustin City Council approves a Capital Improvement Program Budget that includes funding for South Hangar improvements.

October 5, 2018

What's Happening with the Historic Tustin Hangars?

From Navy to DTSC and WQCB: **Final** semi-annual groundwater monitoring data summary.

October, 2018

RAB indicate DoN is continuing to monitor, test, clean groundwater plumes and will report their conclusions and recommendations in 2018 and 2019.

November 30, 2018

FINAL summery report for locations and levels of PFAS and PFOS on site.

December 18, 2018

OC Board of Supervisors has closed session with the Department of the Navy, City of Tustin and Mater Dei Development regarding Parcel 18.

March 2019

PEERS lawsuit against Navy.

August 1, 2019

City of Tustin asks Navy to step up maintenance on Parcel 18. City has no right of entry (except in emergencies) and no personnel or budget to provide security services.

August 2019

DTSC is unable to concur that a Carve Out property is suitable for transfer due to findings from HERO.

August 15, 2019

Orange County Real Estate office e-mails the Navy to request meeting about Historic Monument requirements of NPS with regard to the hangar structure. It wants to better understand the requirements to help put together a proposal that will be met with approval by NPS. No response from NPS. (See October 15, 2019 entry below)

August 30, 2019

Navy to Tustin: we will step up maintenance and security on North Hangar site per your request.

September 2019

Tustin City Council has consultant produce bid-ready documents for a power and lighting package, and a structural package in line with CIP budget. Includes: voluntary upgrades to Hangar No. 2. (Truss Repair, Hangar Doors, Power Distribution, Exterior Shell and Fire Life Safety/Disabled Access).

October 8, 2019

City of Tustin meets with OC Supervisor 3rd District, regarding the 85-acre parcel and North Hangar.

October 10, 2019

RAB meeting at Tustin Senior Center. Ground contamination is being identified, classified and in some areas remediated by Navy contractors on an ongoing basis. DTSC has no timeline for establishing PFAS standards.

October 14, 2019

City of Tustin sends letter dated October 14, 2019 to Orange County reaffirming Tustin's good faith commitment to work with the Navy on property acquisition and asking the county to decide whether they still have a commitment to a regional park or not. If their intentions have changed, they need to engage

What's Happening with the Historic Tustin Hangars?

the Navy and city of Tustin regarding their decision. Tustin cannot wait any longer. They need to start the process of planning changes to the Tustin Legacy development if necessary.

2020

Tustin plans to begin construction of South Hangar improvements. Tustin has plans to continue improvement and use of the South Hangar. They intend to continue to develop infrastructure adjacent to and around the hangar and make the South Hangar more publicly accessible on a more regular basis.

What's Happening with the Historic Tustin Hangars?

Orange County's Cybersecurity Preparedness



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SUMMARY

The 2019-2020 Grand Jury's investigation into the state of Orange County's cybersecurity preparedness focused on the review of a number of County provided cybersecurity reports, documents, policies and assessments related to the County's cybersecurity efforts. Potential threats in the cybersecurity landscape are ever evolving, and it is imperative that the County ensure compliance with its adopted policies across all County departments and continue to evaluate and implement new measures into their cybersecurity protocols and procedures.

The Grand Jury's investigation revealed that some County departments are currently out of compliance with the County's Vulnerability and Patch Management Policies, and there have been no approvals for variances from these policies as required by the County's Variance Review and Approval Process Policy.

A review of the County's most recent Vulnerability/Penetration Assessment, performed by independent IT consultants in June 2019, concluded that the top priority for the County's cybersecurity efforts should be to update software across the County's IT systems to remove or mitigate thousands of existing serious security vulnerabilities. This cybersecurity assessment was also deemed by the consultants to be "Incomplete" in that only a portion of the County's externally facing servers and internal networks were permitted to be evaluated. An incomplete vulnerability/penetration assessment increases the potential vulnerability to cyberattacks for County information systems and data.

The Grand Jury believes that the County has the oversight responsibility and liability for the county-owned computer systems and data residing within all County departments, including those headed by elected officials, and that the County should require all County departments to comply with its cybersecurity policies and participate in vulnerability and penetration assessments.

REASON FOR THE STUDY

The security of Orange County's information technology systems and data are of vital importance to the functioning of the County's government and services. The ability to protect the County from cyberattacks and sustain essential functions is the foundation of a resilient cybersecurity program. A review of the Grand Jury's 2016-2017 report on the status of County cybersecurity revealed that many of the report's recommended actions were just being implemented, three years later. The reason for the 2019-2020 Orange County Grand Jury's investigation was to assess the current status of the County's cybersecurity preparedness, policies and procedures, and recommend actions which could improve the County's cybersecurity resilience.

METHOD OF STUDY

In conducting its investigation, the Grand Jury reviewed numerous County-produced cybersecurity reports, policies, documents, and assessments, as well as online research. The Grand Jury interviewed six County employees and an IT consulting contractor to the County. Much of the information and reports which were reviewed and relied on were provided by Orange County Information Technology (OCIT) and contained non-public and potentially sensitive information.

Due to the COVID-19 pandemic, the 2019-2020 Grand Jury was required to suspend its investigation for almost nine weeks. Unfortunately, this limited the Grand Jury's time to complete the investigation, including receiving and reviewing additional requested information from OCIT regarding policy compliance updates, and additional interviews of IT personnel from some departments.

BACKGROUND AND FACTS

Introduction

The 2019-2020 Grand Jury's investigation into the state of the County's cybersecurity preparedness focused on the review of a number of reports and documents related to the County's cybersecurity preparedness including the following;

- The 2016-2017 Orange County Grand Jury's report on Digital Data
- The County's two most recent State of County Cybersecurity reports
- The County's Cybersecurity Best Practices Manual
- The County's Cybersecurity Policy (Draft)
- Individual County policies related to cybersecurity
- June 2019 Security Architecture and Vulnerability/Penetration Assessment

Following is a brief discussion of each of these reports and documents, including information which is considered pertinent to the Grand Jury's investigation, findings and recommendations.

2016-2017 Orange County Grand Jury Report on Digital Data

The 2016-2017 Orange County Grand Jury's report entitled "Orange County's Digital Data: Is it Protected from Cyber Attack?" contained numerous findings and recommendations on enhancing the County's cybersecurity preparedness. Responses to the report's recommendations from the County were received in September 2017, with additional follow-up responses in March 2018. Many of the report's recommendations have been adopted and implemented by the County and Orange County Information Technology (OCIT).

Of the report's recommendations, two in particular were considered relevant to the Grand Jury's current investigation. These two recommendations and the County's responses, are set out as follows:

1. **Recommendation 15:** Procedures for updating and patching all County software and systems that have been established by OCIT for the shared services program should be made mandatory for all County departments and agencies that report to the CEO, and recommended for all other county government entities by 6/30/2018.

County Response in Sept 2017: This recommendation has not yet been implemented but will be in the future. OCIT has procured vulnerability scanning software and implemented network architecture to enable supporting other County departments with the conduct of vulnerability scans. These scans are used to determine the level of

patching required for County information systems and networks. Most departments are already doing automated patching of systems and software; the only component missing is the vulnerability scanning for verification. This issue will be resolved as part of the technical controls to be implemented through the efforts of the Cyber Security Joint Task Force (CSJTF).

County Follow up Response in March 2018: OCIT has initiated vulnerability scanning for county departments and tracks findings in the County Governance, Risk, and Compliance Platform. This practice is included in the technical controls that will be submitted to the CSJTF for approval. Vulnerability scanning is a key component for the development of a County Security Operations Center.

Recommendation 18: OCIT should establish standardized procedures for conducting periodic cybersecurity vulnerability and penetration testing by 12/31/19.

County Response from Sept 2017: This recommendation has been implemented. This process is implemented and is currently being realized through the countywide cyber security audits and assessments. Additionally, OCIT oversees the conduct of a penetration test of the County externally facing network systems and security appliances. Part of this annual penetration testing is also to conduct a comprehensive vulnerability scan and social engineering penetration test. Social Engineering is the act of manipulating an employee into providing access to county information systems and networks through either a phishing attempt, phone scams and or other means of contacting the target of the attack. Penetration testing services are also offered under the Tevora RCA for audit and assessment services.

It is noted that the Cybersecurity Joint Task Force (CSJTF) is a committee formed to oversee County cybersecurity policy development, and to insure that county assets and systems are as safe as practicable now and into the future. The Cybersecurity Joint Task Force (CSJTF) is comprised of representatives from County Risk Management, Departmental Administrative Services, and Departmental Information Technology, and is chaired by the County Chief Information Security Officer (CISO). The purpose of the CSJTF task force is to develop and oversee compliance with the County Cybersecurity Manual, which establishes a common set of standards and practices to improve the Cybersecurity posture for all County departments.

In 2018, OCIT procured a software platform for its Governance, Risk Management & Compliance (GRC) initiative. The GRC provides a central location for assessment results from throughout the county. This information along with controls, drives actions that will mitigate

cyber threats. The GRC platform is used to track individual findings and vulnerabilities that can be followed down to a specific location. This results in a disciplined and efficient approach to remediation of cybersecurity deficiencies, whether they are technical in nature or administrative.¹

The potential threats in the cybersecurity landscape are ever-evolving, and it is imperative that the County ensure compliance with its adopted policies across all County departments, and continue to evaluate and implement new measures to their cybersecurity protocols and procedures.

State of County Cybersecurity Reports

A review was made of the two most recent State of County Cybersecurity reports prepared by Orange County Information Technology (OCIT), dated June 2018 and December 2019. These reports were requested from OCIT by the Board of Supervisors to provide an update on the state of the County's cybersecurity preparedness.

The December 2019 report indicates that OCIT is responsible for approximately seventy-five percent of the County's cyber preparedness program. While OCIT collaborates and assists in various ways with the remaining twenty-five percent of the County, they state that they realistically cannot certify that the County fully complies with the cyber preparedness program across all County departments. OCIT recommends in its report that the Board of Supervisors initiate steps to consolidate all technology infrastructure across all County departments.

The 2019 State of County Privacy and Cybersecurity report also identifies some of OCIT's recent cybersecurity efforts. OCIT has deployed an enterprise solution for vulnerability scanning which is available to all County departments. The objective of the vulnerability management program is to reduce the time that a vulnerability is exposed to threats.

The 2019 report also indicates that updating and patching of software is fundamental to effective cybersecurity hygiene and is critical for mitigation of risks related to ransomware exploitation. Rapid remediation of identified vulnerabilities with minimal user intervention is critical for large enterprises such as the County. OCIT recommends that the County acquire automated patching software tools to enhance its cybersecurity program. Continued follow-up and process improvement is critical to ensuring that the standards established in the County's Vulnerability and Patch Management Policies are adhered to across all County departments.

¹ State of County Cybersecurity Bi-Annual Report, June 2018

County's Cybersecurity Best Practices Manual

The County's Cybersecurity Best Practices Manual was prepared by the Cyber Security Joint Task Force and approved by the IT Executive Council at its August 2018 meeting. This manual provides a framework and describes best practices to establish a secure environment that safeguards the confidentiality, integrity and availability of the data and information systems used to manage the services provided by the County. The Cybersecurity Best Practices Manual applies to all departments in the County.

To maintain a strong cybersecurity posture it is essential for cybersecurity programs to include procedures and controls implemented within all departments to secure data and information systems. Each department is required to develop a departmental cybersecurity program, with the procedures and controls included in the departmental program to be determined by the department. The Cybersecurity Best Practices Manual is intended to provide guidelines for departments, and any changes or modifications to the guidelines need to be discussed with OCIT.

County Cybersecurity Policy

The County has recently developed an overall County Cybersecurity Policy in order to provide guidance and protection to County employees, and to safeguard the information resources entrusted to employees. The County's Cybersecurity Policy is based upon NIST SP 800-53 standards and best practices, and is considered the minimum standard for providing a secure environment. The County Cybersecurity Policy was approved and adopted by the CSJTF in August 2019. Although OCIT believes that passage of the Policy is the correct step, the CSJTF vote was not unanimous. The Policy recently passed a vote of the IT Executive Council, and as of the publication of this report is in the process of being approved and adopted by the County CEO.

Following is a summary of some of the pertinent components of the County Cybersecurity Policy:

- **Approval/Revision Dates:** Approved by CSJTF on August 8, 2019, pending approval by IT Executive Council and CEO
- **Authority:** County Executive Office
- **Policy Owner:** County Chief Information Officer
- **Policy:** Departments shall develop, implement, and maintain a Cybersecurity program that consists of policies, procedures, plans, and guidelines for safeguards to protect information during storage, use or in transit.

- **Scope:** This policy applies to all departments in the County as well as all employees, contractors, vendors, customers, and others who utilize, possess or have access to County IT resources.
- **Compliance:** The County shall verify compliance with this policy.
- **Variances:** Variances to this policy shall be documented and approved following the County Variance Review and Approval Process.
- **Non-Compliance:** Non-compliance with this policy may result in significant delays to the implementation of information systems and/or technologies. Devices not in compliance with the Policy may have their access to the County's network restricted.
- **Policy Control and Maintenance:** The County Chief Information Security Officer is responsible for maintaining this policy.

County Vulnerability Management Policy

A vulnerability management process identifies, analyzes and manages vulnerabilities in an organization's operating environment. The vulnerability management process is divided into three areas:

Vulnerability Management – lays the foundation for the Vulnerability Management Program and establishes the management framework for monitoring, mitigating and preventing future vulnerabilities to County assets.

Vulnerability Monitoring – commonly employs tools and process capable of detecting and determining various types of vulnerabilities and determining remediation and mitigation strategies.

Vulnerability Remediation and Mitigation – involves the analysis of risk from identified vulnerabilities, prioritizing those vulnerabilities and determining remediation and mitigation strategies.

As part of its vulnerability management program, the County adopted a Vulnerability Management Policy in August 2018. Following is a summary of its pertinent components:

- **Approval/Revision Dates:** Approved 8/15/2018, No Revisions
- **Authority:** County Executive Office
- **Policy Owner:** County Chief Information Officer
- **Policy:** Each Department shall develop and maintain a Vulnerability Management process as part of its Cybersecurity program, and shall perform monthly vulnerability scans with the results entered into the County enterprise GRC platform.

- **Scope:** This policy applies to all County departments.
- **Compliance:** An entity designated by the County shall verify compliance to this policy through various methods including internal and external audits.
- **Variations:** Variations to this policy shall be documented and approved following the County Variance Review and Approval Process.
- **Non-Compliance:** Non-compliance with this policy may result in unidentified vulnerabilities that compromise County data and/or assets
- **Policy Control and Maintenance:** The County Chief Information Security Officer is responsible for maintaining this policy.

OCIT has deployed an enterprise solution for vulnerability scanning which is available to all County departments. OCIT advised the Grand Jury that while most County departments are currently participating and utilizing this vulnerability scanning software, some departments may be utilizing other software and have not provided scanning results to OCIT on a monthly basis to be in compliance with the Vulnerability Management Policy. OCIT advised the Grand Jury that the departments which are currently not submitting vulnerability scan results include the Auditor/Controller, Treasurer/Tax Collector, Health Care Agency, Sheriff/Coroner, District Attorney, and Public Defender.

While the Grand Jury has been informed by County executives that they do not have the authority to instruct elected officials on how to operate their departments, the Grand Jury believes the County has the oversight responsibility and liability for the County Policies pertaining to the County owned computer systems and data residing within all County departments, including those headed by elected officials. The Grand Jury believes that the County needs to do more than recommend compliance to departments with elected officials, and should require all County departments to comply with its cybersecurity policies, including this Vulnerability Management Policy. In-lieu of participating in the County's monthly vulnerability scanning, a department could choose to comply by performing their own vulnerability scans and providing the results to the County Governance, Risk and Compliance platform.

County Patch Management Policy

Patch management has emerged as one of the more critical issues for today's IT organizations. The importance of efficient application of vendor-supplied patches cannot be understated, particularly in light of increasing vulnerability alerts, intrusion activity, and virus proliferation. Vulnerabilities arising from unpatched or misconfigured software account for the majority of all internet security breaches.

Patch management is integral to a department's cybersecurity program, in particular its vulnerability management program. Responsible IT organizations have an obligation to establish assertive, systematic patch management processes based upon a solid foundation of policy, procedures and training. Failure in doing so is to court risk and invite disruption of business activity.

As part of its cybersecurity program, the County adopted a Patch Management Policy in August 2018. Following is a summary of its pertinent components:

- **Approval/Revision Dates:** Approved 1/28/2004, Revised 8/15/2018
- **Authority:** County Executive Office
- **Policy Owner:** County Chief Information Officer
- **Policy:** County departments shall establish internal processes and procedures to ensure efficient application of vendor-supplied security patches based upon the severity level of the vulnerabilities identified.
- **Scope:** This policy applies to all County departments.
- **Compliance:** An entity designated by the County shall verify compliance to this policy through various methods including internal and external audits.
- **Variances:** Variances to this policy shall be documented and approved following the County Variance Review and Approval Process.
- **Non-Compliance:** Non-compliance with this policy may result in vulnerabilities that compromise County data and/or assets. Devices not in compliance with this policy may have their access to the County's network restricted.
- **Policy Control and Maintenance:** The County Chief Information Security Officer is responsible for maintaining this policy.

OCIT advised the Grand Jury that while most County departments are currently participating and have established internal processes and procedures to ensure efficient application of vendor supplied security patches, some departments have not, and are not in compliance with the Patch Management Policy. The Grand Jury requested the status of compliance for each department with the Patch Management Policy from OCIT, however this information was not received prior to the publication of this report.

Reiterated from the discussion on the prior policy, the Grand Jury believes that the County has the oversight responsibility and liability for County Policies pertaining to the County owned computer systems and data residing within all County departments, including those headed by elected officials. The Grand Jury believes that the County needs to do more than recommend compliance to departments with elected officials, and should require all County departments to

comply with its policies related to cybersecurity, including this Patch Management policy establishing internal processes and procedures to ensure efficient application of vendor-supplied security patches.

County Cyber Incident Reporting Policy

As part of its cybersecurity program, the County adopted a Cyber Incident Reporting Policy in September 2018. The County Cyber Incident Reporting Policy seeks to ensure that the Board of Supervisors, County Executive Office, and impacted Department Heads are informed of significant cybersecurity incidents in a timely manner.

Following is a summary of the pertinent components of the Cyber Incident Reporting Policy:

- **Approval/Revision Dates:** Approved 9/26/2018, No Revisions
- **Authority:** County Executive Office
- **Policy Owner:** County Chief Information Officer
- **Policy:** County departments shall report cybersecurity incidents to the Central IT Service Desk. Confirmed cybersecurity incidents that meet the criteria defined in the Significant Incident/Claim Reporting Protocol shall be reported by the CISO to the CIO, CEO, and the Board of Supervisors within 24 hours. County departments shall review and confirm the accuracy of the Confirmed Cybersecurity Incident Report prepared by OCIT annually.
- **Scope:** This policy applies to all County departments.
- **Compliance:** The County shall verify compliance to this policy including internal and external audits.
- **Variations:** Variations to this policy shall be documented and approved following the County Variance Review and Approval Process.
- **Non-Compliance:** Non-compliance with this policy may result in cybersecurity incidents not being properly reported and addressed.
- **Policy Control and Maintenance:** The County Chief Information Security Officer is responsible for maintaining this policy.
- **Reporting Criteria:** The CISO shall report to the Board of Supervisors any confirmed cybersecurity incident that meets any of the following criteria:
 - Involves a natural disaster or other incident that impact County residents and property
 - Involves an unusual or significant dangerous condition of property that is owned, occupied or maintained by the County
 - Involves sensitive issues of government practices or public policy

- Involves multiple cities or jurisdictions and will require coordination with cities, state agencies/departments, and or the federal government
- Involves reports from County contracted consultants or a government agency critical of County policy, procedure or processes
- Has the potential to result in a claim/litigation against the County
- May attract significant media attention

It is imperative to County decision-makers and residents that significant cyber incidents which occur on County IT systems and networks be reported to the County CIO, CEO, and Board of Supervisors within 24 hours. OCIT indicated that as of January 2020, there have been no confirmed cybersecurity incidents reported to them which meet the criteria defined in the Significant Incident/Claim Reporting. The Grand Jury requested documentation from OCIT confirming compliance with this County Policy, however this information was not received prior to the completion of its investigation.

County Variance Review and Approval Process Policy

The County Policy for Variance Review and Approval Process allows for Department heads and County leadership to make an informed decision on whether or not to accept a variance from the Cybersecurity Best Practices Manual or County policies by understanding the risks and alternatives involved. All requests for variances are to be documented using the County Variance Request Form and are to be logged in a central repository, to be maintained by OCIT. Approved County Variance Request Forms shall be reviewed at least annually for renewal by the CISO and the department requesting the variance.

Following is a summary of the pertinent components of the Variance Review and Approval Process Policy:

- **Approval/Revision Dates:** Approved 4/2/2018, No Revisions
- **Authority:** County Executive Office
- **Policy Owner:** County Chief Information Officer
- **Policy:** The procedure will allow department heads and County leadership to make an informed decision on whether or not to accept a variance from the Cybersecurity Manual or County Policy by understanding the risks and alternatives involved.
- **Scope:** This procedure applies to all departments in the County.
- **Compliance:** An entity designated by the County shall verify compliance to this policy through various methods including internal and external audits.
- **Variances:** Variances to this policy shall be documented and approved following the County Variance Review and Approval Process.

- **Non-Compliance:** Non-compliance with this policy may result in significant delays to the implementation of information systems and/or technologies.
- **Policy Control and Maintenance:** The County Chief Information Security Officer is responsible for maintaining this policy.

A review of the current repository of all requested variances indicates that only four requests for variances have been received as of February 2020. A summary of the four variance requests is set out below:

1. August 2018 – Use of Administrative Accounts by system administrators
2. August 2019 – ROV Windows 2000 Plate Printers
3. February 2019 – OCCR Public Library Network Traffic Monitoring
4. February 2019 - Clerk of the Board Desktop Admin Account

While the total number of existing issues requiring variances from the County's cybersecurity best practices and policies is unknown, it is apparent that many non-compliant issues currently exist. It is imperative that all County departments comply with the County's adopted cybersecurity best practices and policies or submit the required requests for variances.

Security Architecture and Vulnerability/Penetration Assessment

As part of the Grand Jury's investigation into the County's cybersecurity preparedness, a review was made of the most recent Security Architecture and Vulnerability/Penetration Assessment, dated July 12, 2019, which was conducted by IT consultants retained by the County.

The Security Architecture Assessment compared the capabilities of the security tools deployed by the County, as well as the security process used by the County, with an appropriate set of security controls derived from the NIST 800-53 Standard. The results of this assessment provide the OCIT Security organization with a prioritized list of initiatives to implement new or different security tools or security processes. These initiatives can better equip the County of Orange to proactively combat the growing cybersecurity attacks causing data breaches and millions of dollars of potential ransomware.

The External and Internal Security Assessments assessed the vulnerability of selected external and internal computing and network devices of the County. The IT consultant deployed several automated tools and utilized techniques in order to evaluate the vulnerability of servers, workstations and networking devices to a cybersecurity attack across the public internet, or origination from within the County's internal networks.

Based on the results of the Security Architecture Assessment, the County's existing security controls can provide the majority of the security controls that the County should have in place, but there are several significant gaps in controls that need to be addressed. The two most significant findings of this assessment were that many of the County's external and internal hosts are running out-of-date software, and that numerous departments/agencies chose not to participate and therefore the assessment was deemed by the consultants to be "Incomplete." The assessment also concluded that because of the prevalence of out-of-support and unpatched software in the County's environment, the County is at "high risk" of being compromised by a cyberattack.

While the Grand Jury has been informed by County executives that they do not have the authority to direct elected officials on how to operate their departments, the Grand Jury believes the County has the responsibility and liability for the County owned computer systems and data residing within all County departments, including those headed by elected officials. It is recognized that penetration testing assessments can be disruptive and interfere with regular business operations. However, the County's IT consultant who performed the most recent assessment has indicated that a penetration assessment could be conducted during off-business times and terms acceptable to individual department's IT needs and security requirements.

The Grand Jury believes that the County needs to do more than recommend participation in future County-wide vulnerability/penetration assessments, and should require all external facing servers and internal networks from all County departments to be included. In-lieu of participating in the County conducted vulnerability/penetration assessment, a department could choose to comply by performing its own vulnerability/penetration assessments and provide the results to the County, as long as the criteria for the assessment is equal to or exceeds County standards.

FINDINGS

Pursuant to California Penal Code Sections 933 and 933.05, the Grand Jury requires (or, as noted, requests) 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 entitled "Orange County's Cybersecurity Preparedness," the 2019-2020 Orange County Grand Jury has arrived at four principal findings as follows:

- F1. Some County departments are not submitting monthly vulnerability scan results of their computer devices to OCIT to be entered into the County's enterprise Governance, Risk

Management, and Compliance platform, and are non-compliant with the County Vulnerability Management Policy.

- F2. Some County departments have not established or submitted procedures to ensure application of software security patches based upon the severity level of the vulnerability, and are non-compliant with the County Patch Management Policy.
- F3. Even though a number of County departments are not in compliance with the County's Vulnerability Management Policy or Patch Management Policy, there have been no requests or approvals for variances from these policies, per the requirements of the County's Variance Review and Approval Process Policy.
- F4. The County's most recent Vulnerability/Penetration Assessment, performed by independent consultants in June 2019, was deemed to be "Incomplete," as only a portion of the County's externally facing servers and internal networks were permitted to be evaluated. An incomplete vulnerability/penetration assessment increases the potential vulnerability of County information systems.

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 here, the 2019-2020 Orange County Grand Jury has arrived at the following recommendations:

- R1. All County departments, including those with elected heads, should be required to comply with the County's Vulnerability Management and Patch Management Policies, or request variances from them, per the County's Variance Review and Approval Process Policy. (F1-F3)
- R2. All external facing servers and internal networks from all County departments, including those with elected heads, should be required to be included in future County vulnerability/penetration assessments so that the cybersecurity assessments can be considered complete. (F4)

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 “Comments and Reports on Grand Jury Recommendations.”

“(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 or 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....”

§933.05 “Response to Grand Jury Recommendations – Content Requirements; Personal Appearances by Responding Party; Grand Jury Report to Affected Agency.”

“(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.”

Responses Required

Comments to the Presiding Judge of the Superior Court in compliance with California Penal Code Section 933.5 are required from:

Findings

County of Orange Board of Supervisors F1-F4

Recommendations

County of Orange Board of Supervisors R1, R2

REFERENCES

- NIST SP 800-53 standards (National Institute of Standards and Technology)
- County of Orange Cybersecurity Best Practices Manual prepared by the Cybersecurity Joint Task Force and approved by the IT Executive Council August 21, 2018.

GLOSSARY

A list of definitions for acronyms is included here:

OCIT	Orange County Information Technology
CSJTF	The Cybersecurity Joint Task Force
CISO	County Chief Information Security Officer
CIO	Chief Information Officer
CEO	Chief Executive Officer
ROV	Registrar of Voters
OCCR	Orange County Community Resources

Maternal Health Care While Incarcerated



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SUMMARY

Pregnancy is an emotionally and physically challenging period for women, no matter what the circumstances. Coupled with the experience of being incarcerated, those challenges quickly become overwhelming and even unbearable. Incarcerated pregnant inmates should be afforded basic humane treatment that not only protects them from harm, but fosters development of a healthy baby as well.

The Grand Jury learned through records review that the population of the Central Women's Jail (CWJ) included a total of 334 pregnant inmates in 2018 and a total of 350 in 2019. The Grand Jury reviewed ten fetal deaths which occurred while the pregnant inmate was in custody, seven of which took place in 2018 and 2019. In each of those years, 27 abortions were performed. Inmates that were less than 20 weeks pregnant and miscarried while incarcerated were not tracked by the Correctional Health Services (CHS). At any given time, approximately 15 inmates are pregnant, representing 5% of the female population.

During its investigation of the CWJ, the Grand Jury found that the quality of maternal health care for incarcerated inmates varied widely. Care ranged from adequate prenatal care to handcuffing of an inmate during labor and delivery, to ignoring urgent requests for medical care. The Grand Jury also learned that some of these pregnancies ended in the death of the fetus.

In addition, the documentation reviewed of pregnancies and pregnancy care in the jails was found to be sparse, sometimes anecdotal, or wholly insufficient. Even when it exists, established policy was not always adhered to resulting in inconsistent medical and custodial care delivered to pregnant inmates. This report will focus on key components of maternal health care while incarcerated at the CWJ.

REASON FOR THE STUDY

A number of reports by local journalists have been published about women in the Orange County jails who have been ignored or provided substandard medical care while pregnant. In some cases, substandard medical care allegedly led up to the deaths of their babies.¹ In addition, a study reported by the *ACLU Jails Project* in 2017, found that in Orange County, "pregnant women, who are incarcerated, are subject to poor medical attention and a lack of accommodations for their housing and dietary needs."² Due to the seriousness of these allegations, the 2019-2020

¹ See Reference 1, 2, 3

² American Civil Liberties Union Foundation of Southern California, *Executive Summary: Orange County Jails* (2017) p. 8.

Orange County Grand Jury undertook an investigation of the maternal health care of pregnant inmates at the CWJ.

The goal of the 2019-2020 Orange County Grand Jury is to determine if pregnant inmates are being provided the necessary prenatal health care, as well as specific pregnancy-related screenings and accommodations, while incarcerated. This investigation seeks to determine if the Intake/Release Center (IRC) and CWJ are informing pregnant inmates of their health rights while incarcerated, and of health care and pregnancy-related programs that are available to them. In addition, this investigation considers whether or not Orange County is providing “medical services...at a community standard of care” to pregnant inmates in the County’s correctional facilities.³

METHOD OF STUDY

In conducting its investigation, the Grand Jury interviewed multiple representatives of the Orange County Sheriff’s Department (OCSD), the Orange County Health Care Agency (HCA), Correctional Health Services (CHS), a Public Health Nutritionist, incarcerated pregnant inmates, as well as former female inmates after their release. It toured the IRC, CWJ, Theo Lacy Facility, and Juvenile Hall.

A thorough review was conducted of the OCSD and HCA procedures relating to pregnant inmate care and Title 15- *Minimum Standards for Local Detention Facilities* including but not limited to:

- Medical intake forms completed by CHS
- Hospital and medical records created during the inmate’s incarceration
- Inmate jail records from the OCSD

Due to federal laws that protect the privacy of medical records, four subpoenas were served to obtain medical details pertaining to in-custody deaths of infants.

The Grand Jury also conducted extensive research and document review pertaining to best practices for incarcerated pregnant inmates from medical societies, newspaper and journal articles, and government reports.

³ OC Health Care Agency <http://www.ochealthinfo.com/about/chs/achs>, last accessed 01/16/2020.

BACKGROUND AND FACTS

Access to proper prenatal care is essential for a healthy pregnancy. It is estimated that eight to ten percent of women who enter jail are pregnant.⁴ For many women, the first time that they learn that they are pregnant is when they enter jail.

At the time of their arrest and incarceration, many pregnant inmates lack prenatal care and need considerable support to improve the clinical outcomes of their pregnancies.⁵ Many of these mothers have high-risk pregnancies due to economic and social conditions that led them to be incarcerated: poverty, lack of education, lack of adequate health care and substance abuse. The lack of careful screening and appropriate medical treatment during incarceration, could contribute to pregnant inmates and their babies being at risk for life-long health problems.⁶

National data on inmate pregnancy are scant and outdated. According to a 2004 Bureau of Justice Statistics survey, 3% of women in federal prisons and 4% in state prisons reported that they were pregnant at intake.⁷ The Grand Jury learned through its investigation that the CWJ housed a total of 334 pregnant inmates in 2018 and a total of 350 in 2019 (see Figure 1 and Figure 2). At any given time approximately 15 inmates are pregnant, representing 5% of the rated capacity (274) of the CWJ.

The Grand Jury reviewed ten fetal deaths that took place while the inmate was in custody, seven of which occurred in either 2018 or 2019. A total of 27 abortions were performed in 2018 and 2019. Inmates that were less than 20 weeks pregnant and miscarried while incarcerated were not tracked by the CHS even though policy states they “shall keep a list of all pregnancies and their outcomes.”

⁴ Legal Services for Prisoners with Children, *Pregnant Women In California Prisons and Jails* (2006), Accessed August 8, 2019. https://www.courts.ca.gov/documents/BTB_23_4K_5.pdf.

⁵ National Commission on Correctional Health Care, Position Statement: Women’s Health Care in Correctional Settings (October 2014) www.ncchc.org.

⁶ Hotelling, B.A., *Perinatal Needs of Pregnant, Incarcerated Women*, *J Perinat Educ*, 17(2):37-44.

⁷ *Pregnancy Outcomes in US Prisons, 2016-2017*. *Am J Public Health*. 2019; 109.799-805: doi: 10.2105/AJPH.2019.305006.

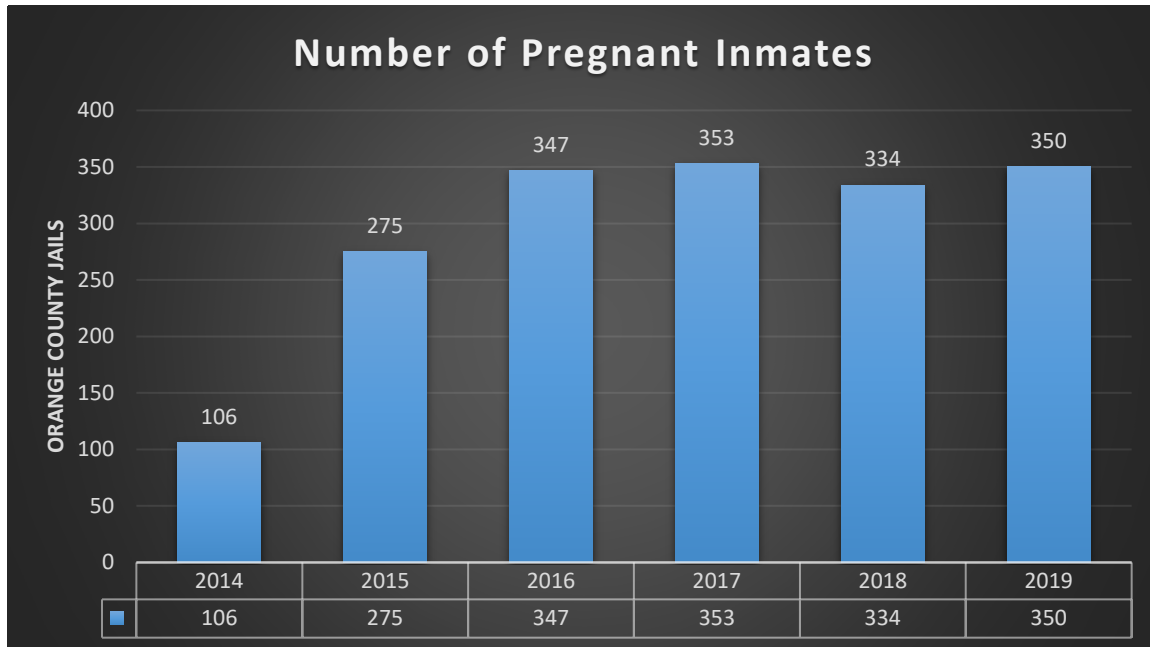


Figure 1. Number of pregnant inmates in Orange County Jails.

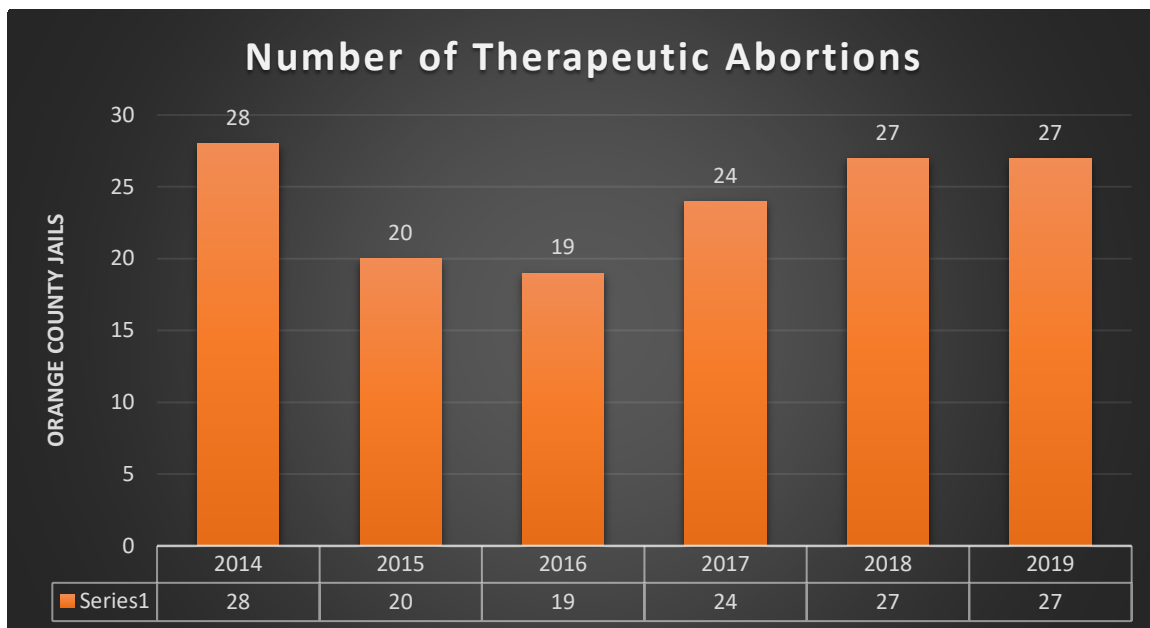


Figure 2. Number of therapeutic abortions in Orange County Jails.

Intake Release Center

As a result of the 2018-19 Orange County Grand Jury report *The Silent Killer*, the OCSD agreed to construct four interview cubicles at the IRC to provide confidentiality during screenings to enable and increase the number of inmates who can be screened at one time, while decreasing

the overall time for new bookings. Construction for this project is funded and was scheduled to begin by December 31, 2019.⁸ However, during a tour of the jail, it was noted that construction had not started and the configuration of the two existing health screening stations remain unchanged, with no additional temporary accommodations in place. It is now reported that the design phase of the project has been completed and construction is scheduled to begin as this report goes to publication with completion expected by December 2020.

The Grand Jury recommends that a deadline for the completion of the reconfiguration of the screening area at the IRC be monitored. Secondly, in the interim, the Grand Jury recommends that temporary partitions be installed to separate health screenings with a place to sit for new arrestees. This would allow CHS to conduct more accurate health screenings, improve access, and provide for more privacy for arrestees to answer personal health questions during their interviews as well as improve safety for nurses conducting the screening. This will also be consistent with COVID-19 recommendations.

Statement of Booking Officer

Upon arrival at the Intake Release Center (IRC), which is under the control of the Orange County Sheriff's Department, arrestees receive a health screening conducted by a qualified Correctional Health Services staff member in accordance with regulations,⁹ CHS staff is responsible for completing a screening interview with all arrestees in the IRC in a language that they understand. CHS clinical staff also assess all pregnant or suspected pregnant arrestees for behavior, illness, injury, bleeding, pain, body deformities, skin conditions, level of consciousness and any signs indicative of development disabilities. The results of the arrestee's health screening are to be recorded into an electronic health record.

In addition to a new arrestees' in-take and receiving interview, CHS reviews the Statement of Booking Officer (SOBO) form from the arresting agency and any medical transfer summary for medical and/or mental health information. After reviewing the comments and responses of the officer's statement on the SOBO form, CHS clinical staff signs the bottom of the form and return it to the officer for processing.

After reviewing submitted SOBO forms at the IRC, the Grand Jury found that most of them were satisfactorily completed by the arresting agency. However, on some of the forms, certain fields were not completed, or were illegible, including those for the officer's signature, badge number, and the agency for which the officer works. No additional comments were noted if an arrestee self-identified as pregnant. Without this information on the SOBO, CHS could accept an

⁸ 2018–2019 Orange County Grand Jury Final Report, “The Silent Killer” Hypertension in Orange County's Intake and Release Center, http://www.ocgrandjury.org/pdfs/2018_2019_GJreport/2019-06-04_The_Silent_Killer_%20Hypertension_in_%20Orange_County's_Intake_and_Release_Center.pdf.

⁹ Cal. Code Regs. Title 15, § 3999.100 *et seq.*

arrestee that should otherwise be declined. Even worse, the arresting agency will not be instructed to seek medical care for the arrestee prior to being booked into the IRC.

Vital Signs

On intake, triaging staff are to obtain blood pressure, pulse, respiratory rate, temperature, and pain level, if any. Additional testing will be performed as clinically indicated including:

- a) A blood sugar check for pregnant and diabetic inmates
- b) SpO2 will be recorded for respiratory conditions
- c) Baseline fetal heart tones for pregnant bookings \geq 12 weeks
- d) A Urine Drug Screen (UDS) on all bookings prior to housing for inmates suspected or reporting substance use, and on all pregnant inmates.

During its investigation, the Grand Jury learned that health records such as: Vital Signs, Receiving Screening Questionnaire, Treatments, Fetal Heart Rate, and Initial Visit forms taken at the IRC and during an inmate's obstetrician/gynecologist (OB/GYN) visits were incomplete a majority of the time. In many cases, an inmate's vital signs were left blank or inadequately completed, with missing data throughout the care of the inmate. Clearly, an incomplete medical record:

- Demonstrates incomplete care;
- Demonstrates noncompliance with established policies;
- Contributes to inaccurate quality and care information; and,
- Results in incorrect diagnosis and improper treatment decisions.

Records that fail to concisely convey a patient's condition and the treatment prescribed to address that condition jeopardizes patient safety and hinders any effort to evaluate the quality of the care. With the exception of UDS, documentation of inmate's medical records was consistently found to be incomplete.

Blood Pressure Measurement

When blood pressure is measured, the patient's arm should be at the level of the heart. The patient should be sitting or standing. The arm should be extended and should be about 2-3 inches below the shoulder. If the arm is allowed to hang down to the patient's side, blood pressure may register as much as 12 mm Hg. below its true value. This is not an issue when the patient is lying down, as long as the arm is kept alongside at the level of the body.¹⁰

¹⁰ https://www.medicinet.com/effect_of_position_on_blood_pressure/ask.htm, last accessed 01/23/2020.

During the Grand Jury's tour of the IRC, it observed that arrestees were brought to the triaging staff and remained standing, handcuffed behind the back when their blood pressure was taken. This practice is likely to result in an inaccurate blood pressure reading.

Testing Female Inmates for Pregnancy

The Grand Jury reviewed policies that require pregnant inmates to receive timely and appropriate prenatal, obstetrical, and postpartum care while in-custody. Counseling and assistance are to be provided in accordance with the expressed desires of the inmate in planning for their unborn child. Female inmates will have a pregnancy test (a urine/blood human chorionic gonadotropin (hCG)) done within 3 days of booking, or earlier if the inmate states that she is pregnant. This is identified as "Medical" or "Mental Health" during intake screening. Pregnancy testing must take place prior to work assignments, before any medication is administered. Additional testing will be performed (as clinically indicated) to include: Urine Drug Screen, a blood sugar check for diabetic and pregnant inmates, and a baseline fetal heart tone reading on all pregnant bookings \geq 12-weeks. Further data includes the inmate's height and weight. The Grand Jury consistently found these inmate health records to be deficient, with missing or insufficient documentation of vital signs, including height and weight from initial screening and throughout the medical care a pregnant inmate received while incarcerated.

In contrast, the Grand Jury found that CHS staff routinely performed pregnancy testing with female inmates in the IRC. However, a spot check of files revealed at least one pregnant inmate for whom a pregnancy test was not performed within the required 3 days, during which time she was assigned to work duty, violating the policy for pregnant inmates.

The Grand Jury reviewed policies that require inmates deemed pregnant or possibly pregnant shall have a pink tag (wristband) placed on them during the screening process prior to housing. This is done to alert security staff that that an inmate is pregnant or possibly pregnant. The Grand Jury found that inmates who were identified as pregnant or possibly pregnant while housed at the IRC were consistently given pink tags for identification during the receiving/screening booking process.

Classification of Pregnant Inmates

The Grand Jury reviewed policies that require a Classification/Housing Review/ADA booking checklist be reviewed by the OCSD upon identification of pregnancy to determine where an inmate's housing location will be assigned. Flags will be entered into their health records based on Figure 3 below:

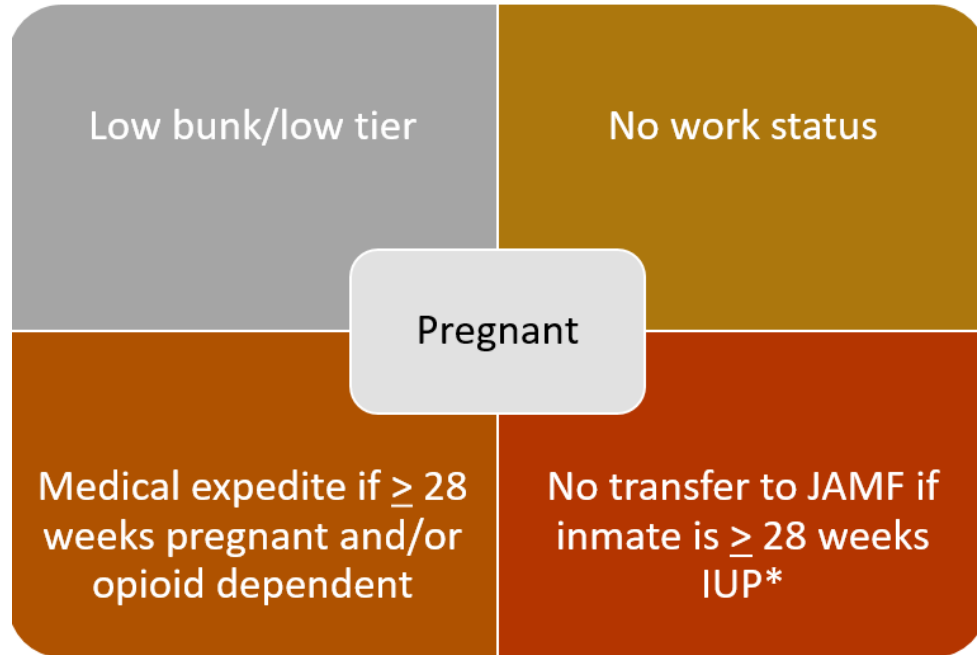


Figure 3. Classification/Housing Review/ADA Booking Checklist
 *JAMF is the James A. Musick Facility. IUP is intrauterine pregnancy.

The Grand Jury found that despite pregnant inmates being correctly identified in the screening process, they were not consistently assigned to a low bunk or tier as established policy dictates.

In reviewing completed Miscellaneous Message Slip (MMS) forms, the Grand Jury noted multiple requests from pregnant inmates to their medical prescriber to request a change of housing to a *low bunk*. Pregnant inmates were in fear of falling off a top bunk which could cause injury to their fetus if a fall were to occur. Some inmates were documented as having bruises from climbing up and down from the top bunk. Some pregnant inmates were unaware of their right to be assigned a low bunk or tier because this information was not included on the *Pregnant Inmate Information* form.

The Grand Jury reviewed one file where an inmate received a medical directive from the OB/GYN stating she was to be assigned to a “permanent (more than 6 months) low tier, low bunk”. However, the inmate was assigned an upper bunk upon returning from the hospital after the fetal demise of her 25-week old baby. In another case, an inmate who was ≥ 28 weeks pregnant had to use the MMS form to remind the OB/GYN to assign her to a low bunk, because the OB/GYN had failed to order her a low bunk/low tier.

Identification of Pregnant Inmate Clothing

The Grand Jury reviewed policies that require a pink tag be issued to a female inmate in the Intake (during receiving screening) by CHS clinical triage staff to alert security staff that the

subject inmate is pregnant or possibly pregnant. Once inmates are assigned to a housing unit, a recently instituted policy requires pregnant inmates to be issued uniforms consisting of a pink smock top and pink pants. In site visits to the WCJ by members of the Grand Jury this was not observed, and interviews with pregnant inmates revealed that they were not issued pink uniforms. The Grand Jury attempted to schedule a follow-up visit to the jail to confirm if the clothing identification policy is being fully implemented. However, at the time of this report, jail visits were suspended due to the Coronavirus (COVID-19) pandemic.

Pregnant Inmate Rights

Being in prison or jail during pregnancy can be a difficult time for many women, fraught with uncertainty about the kind of health care they might receive, about whether they will be shackled in labor, and about what will happen to their infants when they are born.¹¹ For this reason, it is important that pregnant inmates receive complete information about the policies and procedures that the jail will follow during their incarceration to care for them and their developing baby.

The current *Pregnant Inmate Information* form given to pregnant inmates fails to cover all the standards that apply to them. Important rights afforded to female pregnant inmates that are absent from this form include: access to a lower bunk and an extra mattress, specialized footwear (as opposed to open toe sandals) to minimize a tripping hazard, prohibiting pregnant inmates from being forcibly stripped searched, certain types of electronic scanning devices (body scanners), no work-status if pregnant, among others. California Penal Code § 3407(e) states “upon confirmation of an inmate’s pregnancy, she shall be advised, orally or in writing, of the standards and policies governing pregnant inmates, including, but not limited to, the provisions of this chapter, the relevant regulations, and the correctional facility policies.”

The Grand Jury recommends that the *Pregnant Inmate Information* form be revised and updated to reflect current jail standards and policies governing pregnant inmates, including an inclusive list of rights to which pregnant inmate rights are entitled. Furthermore, documentation on California’s state law on consenting and testing for alcohol and/or drug abuse should be disclosed. Inmates should know if consenting and testing for alcohol and/or drugs will be kept confidential or if test results will be reported to the County of Orange Social Services Agency.

Lastly, if an inmate chooses to refuse any medical appointment, treatment, medication or other medical procedure recommended by CHS, the appropriate medical release and/or refusal form(s) shall be provided for signature by the inmate. It is the responsibility of a CHS staff member to witness the form by affixing their signature. If an inmate/detainee refuses to sign the form, staff members are instructed to write “*refused*” above the inmate/detainee signature line. The form then becomes part of the inmate’s medical record. The Grand Jury’s review of these records

¹¹ *Pregnancy Outcomes in US Prisons, 2016-2017*. Am J Public Health. 2019;109.799-805: doi:10.2105/AJPH.2019.305006.

revealed that this policy is not being followed. Many forms were left blank or an “unverified” inmate’s signature was produced that did not match previous inmate’s signature on file.

Housing Classification

Pregnant inmates need a wide range of accommodations to deal with the physical demands of pregnancy. These include being assigned to a lower tier or bottom bunk so that they can avoid the strain and the risk of falling that comes with frequently climbing stairs or steps up to a bunk.¹² Due to the fact that pregnant women are at high risk of falling, activities with a risk of falling should be avoided. Specifically, incarcerated women should be given a bottom bunk during pregnancy and the postpartum period.¹³

In order for a pregnant inmate to receive the following specific accommodations: bottom bunk/ground floor housing, an extra mattress (if pregnancy is ≥ 26 weeks), nourishment snacks and nutritional supplements, she must have written authorization from a CHS prescriber. In the Grand Jury’s review of requests made by pregnant inmates by the submittal of Inmate Health Message Slip and other records pertaining to these standards, it was noted that there were significant inconsistencies throughout all of the cases. Some pregnant inmates were assigned a low bunk from the onset of their incarceration, while others had to make repeated requests to CHS prescribers stating they were pregnant and needed authorization for a low bunk. The Grand Jury reviewed one case where an inmate who had just returned from the hospital after having delivered a stillborn was assigned to the top bunk. She complained of being too weak to climb up to the top bunk and having uncontrollable bladder leakage as a result of the untimely fetal demise of her child. It took several weeks of repeated requests to CHS prescribers to finally have her bed assignment changed to the bottom bunk.

With regard to receiving an extra mattress (if pregnancy is ≥ 26 weeks), the Grand Jury found varying accounts of pregnant inmates receiving this accommodation. Since information such as the right to request an extra mattress is not noted in the Pregnant Inmate Rights form, pregnant inmates were often unaware of this accommodation. Inmates who were aware of this accommodation made requests to their CHS prescribers, but with mixed results. Some pregnant inmates received an extra mattress prior to their 26th week of pregnancy, while others were told that their request would be denied until they were officially 26 weeks pregnant. In one case, an inmate in her 2nd trimester was informed that she had to wait until she was 28 weeks pregnant - not the standard 26 weeks.

¹² ACLU of California, *Reproductive Health Behind Bars in California*, p. 16 (January 2016) (hereafter cited as *Reproductive Health Behind Bars*) citing ACOG Committee Opinion No. 511, (see footnote 13 for full citation).

¹³ American College of Obstetricians and Gynecologists, *Health Care for Pregnant and Postpartum Incarcerated Women and Adolescent Females*, Committee Opinion No. 511. *Obstet Gynecol* 2011;118: 1198-1202, 1199 (hereafter cited as ACOG Committee Opinion No. 511).

Inmates can also receive an extra mattress if their Body Mass Index (BMI) is ≥ 40 , regardless of whether or not they are pregnant. The Grand Jury's review of 21 inmate files revealed that BMI was not reported, even though the electronic health record systems used by CHS has the ability to automatically calculate BMI and populate the field once inmates' heights and weights are inputted. A simple audit of an inmate's vital signs would have easily identified the missing information and corrected the record.

The Grand Jury's overall assessment in reviewing the care and treatment of pregnant women revealed that pregnant inmates did not always receive the accommodations to which they are entitled, and that procedures are not in place to ensure that pregnant inmates receive the accommodations to which they are entitled.

Restraints

Pregnant women are prone to falls due to changes in their centers of gravity and loosening of their joints, among other physiological changes.¹⁴ Restraining pregnant inmates improperly poses serious medical risks that can lead to greater stress, complications, falls, and even miscarriages.¹⁵

California legislation passed in 2012 decrees that jails cannot shackle or restrain pregnant inmates with leg irons, waist chains, or handcuffs behind the body during any point while pregnant.¹⁶ During labor, delivery, or recovery from delivery, additional restrictions apply: people cannot be restrained by the wrists, ankles, or both, unless necessary for the safety of the incarcerated person, the staff, or the public.¹⁷ Any restraints used on the persons at any point in their pregnancy must be removed when a medical professional, in charge of the individual's care, determines such removal is necessary.¹⁸ Jails must advise pregnant inmates about these limitations.¹⁹

During its investigation, the Grand Jury learned of recent changes pertaining to how OCS D restrains inmates while they are being transported to court and while awaiting court hearings in holding cells. As of the publication of this writing, pregnant inmates were identified as being pregnant solely from a master roster with inmate names, controlled by OCS D personnel. No differentiating uniforms identified pregnant inmates. Pink tags only alerted staff that an inmate was pregnant while in the IRC, but these were removed once the inmate is assigned housing. The Grand Jury also learned that there were irregularities with respect to enforcement of the

¹⁴, *Reproductive Health Behind Bars in California*, p. 11, quoting Carolyn Suffrin, *End Practice of Shackling Pregnant Inmates*, S.F. CHRON. (Aug. 26, 2010).

¹⁵ ACOG Committee opinion No. 511, *supra*

¹⁶ Cal. Penal § 3407(a).

¹⁷ Cal. Penal § 3407(b).

¹⁸ Cal. Penal § 3407(c).

¹⁹ Cal. Penal § 3407(e).

newly implemented policy requiring waist restraints not be used for pregnant inmates. Inmates who were aware of their pregnant inmate rights had to alert jail staff that they were pregnant, that they could not be waist restrained and must be handcuffed from the front. It was incumbent on the inmate to alert the deputy about her rights as a pregnant inmate. Interviews revealed pregnant inmates were uncomfortable speaking up due to the fear of being written up for noncompliance. Inmates who were aware of their pregnant inmate rights felt more compelled to speak up, whereas other pregnant inmates opted to comply with the deputy's orders without causing an incident.

Clothing Exchange

Inmates are issued one set of clothing upon intake. Clothing and linen are strictly rationed to prevent them from being altered, bartered or fashioned into escape paraphernalia. No outside clothing is permitted.

California regulations provide that each facility administrator have written policies and procedures for the scheduled exchange of clothing each week. However, undergarments and socks must be exchanged twice each week.²⁰ Outer garments (except shoes), sheets and towels shall be exchanged at least once per week.²¹

The standard issue of clothing for female inmates includes (a) clean socks and footwear; (b) clean outer garments; and (c) clean undergarments, including a bra and two pair of underwear. Pregnant inmates who report spotting can request an exchange of clothing by notifying a guard or completing a Miscellaneous Message Slip (MMS).

Through its investigation, the Grand Jury learned that some inmates choose to launder their clothes in their cell, between scheduled clothing exchange times, to ensure they do not lose their clothes. Typically, inmates will wash their clothing in the sink in their cell, using personal soap purchased from the jail commissary. Although this laundering may remove dirt and odors, it does not disinfect the clothing. Inmates should be advised that the only way to reliably remove organisms that can cause disease is to use the institutional laundry.

General OB/GYN Care

Pregnant women need regular prenatal care to carry a healthy pregnancy to term. California law recognizes this by requiring all pregnant women in a county jail receive (1) an assessment of the scope of medical services she needs, (2) prenatal vitamins, and (3) education about her pregnancy, childbirth, and infant care.²² The prenatal visit schedule recommended by the

²⁰ Cal. Code Regs. Title 15 § 1262 (2008).

²¹ Ibid.

²² Cal. Penal §§ 4023.6; 6030(e)

American College of Obstetricians and Gynecologists (ACOG) is required in state prisons, but is not required by county jails, although they are consistent with medical best practice that all jails should follow.²³

To provide appropriate care, jails must have a comprehensive understanding of new inmates' medical conditions. However, mandatory pregnancy testing often violates privacy rights, and intrudes into one of the most private areas of people's lives—reproductive decision-making.²⁴ There are a variety of reasons people undergoing incarceration, particularly those who are to be held for a limited time, may not want to learn of their pregnancy status in a jail setting, and would prefer, instead, the privacy of their own homes or a doctor's office.²⁵ All people, including those incarcerated, have the right to refuse medical care and testing.²⁶

Additionally, the Grand Jury reviewed policies that require that all female inmates have a urine pregnancy test (hCG) performed within at least 3 days of booking or earlier if the inmate states that she is pregnant, or is identified as “a Medical” or “Mental Health” candidate during intake screening. This must be done prior to any work assignment and/or before any medication is administered.

Lastly, CHS shall be responsible for keeping a list of “all pregnancies and their outcomes”. The Grand Jury investigation revealed that this information was often not documented or reported, if inmates were less than 20 weeks pregnant and succumbed to a miscarriage. In the Grand Jury's opinion, CHS is not adhering to their policy.

Nutrition

Appropriate maternal nutrition can contribute to the delivery of a healthy, full-term newborn of an appropriate weight. An adequate supply of nutrients is required to maintain the delicate balance between the needs of the mother and those of the fetus. An inadequate supply of nutrients will cause biological competition between the mother and the conceptus in which the well-being of both is at serious risk.²⁷ Pregnant women have additional caloric and nutritional needs, including iron supplements and 600 mcg (microgram) of folate [folic acid] per day.²⁸ Medical guidelines suggest about 350 more calories per day during the 2nd trimester, increasing to about 500 calories per day during the 3rd trimester.²⁹

²³ *Reproductive Health Behind Bars*, p. 14.

²⁴ *Reproductive Health Behind Bars*, p. 6, citing *Loder v. City of Glendale*, 14 Cal. 4th 846 (1997) and others, FN 13.

²⁵ *Reproductive Health Behind Bars*, p. 7.

²⁶ Cal. Code Regs. Title. 15, § 1214 (1998).

²⁷ *The Journal of Nutrition*, Vol. 133, Issue 5, May 2003, p. 1732S–1736S, <https://doi.org/10.1093/jn/133.5.1732S>.

²⁸ National Commission on Correctional Health Care, Position Statement: Women's Health Care In Correctional Settings (October 2014) <http://www.ncchc.org>.

²⁹ Amy O'Connor, *Increased Appetite During Pregnancy*, , May 30, 2019, <https://www.whattoexpect.com/pregnancy/symptoms-and-solutions/appetite.aspx>

Through its investigation on prenatal nutritional matters, the Grand Jury found that pregnant inmates are prescribed prenatal vitamins, which can be extended until 30 days following delivery or the date of elective abortion. Prenatal vitamins include 27 mg of iron and 1000 mcg of folate per tablet, which exceeds the recommended daily dosage of 600 mcg.

The mainline daily meals menu is modified to meet the requirements for pregnant inmates. A pregnancy diet is ordered by the OB/GYN for 90 days and can be extended as needed. This diets provide 32 ounces of non-fat milk each day and appropriate whole meat proteins, rather than processed meat, in an overall menu that averages 2,650 daily calories. A review of menu nutrient analysis reports for September 2017, revealed a range of total daily calories from a high of 3,120 calories to a low of 2,346 calories.

Despite daily meals meeting the requirements, pregnant inmates interviewed reported that they were often hungry. If reported to the OB/GYN, additional food including a snack and milk can be ordered. Food is also available in the commissary for purchase, but they may not have money available to purchase additional food.

Water

Pregnant women need constant access to potable water to avoid dehydration.³⁰ Through its investigation, the Grand Jury learned that dehydration is not uncommon among pregnant inmates. It is especially important to stay hydrated during the last trimester when dehydration can cause contractions that can trigger preterm labor. An adequate supply of water also helps prevent urinary infections, hemorrhoids, and constipation, all of which are common during pregnancy. Drinking water dilutes urine, which reduces the risk of infection.

While water is accessible to inmates in their cells, pregnant inmates expressed concern over the taste of tap water that is available in jail. As a result, pregnant inmates were found to be drinking far less water per day than the amount recommended for them. Pregnant inmates were more likely to stay hydrated when given flavoring packets such as Sqwincher³¹ (hydration powder mix) mixed with water. The flavoring packets are only dispensed by CHS clinical staff and only with authorization from the inmate's OB/GYN or CHS prescriber. For safety reasons, inmates are not allowed to have bottled water in their cells which means that inmates must drink from the faucets in their cells making it difficult to track water intake.

Although the Grand Jury requested maintenance logs and service records for the jail's water supply, the records were not produced prior to the publication of this report.

³⁰ *Reproductive Health Behind Bars*, page 16.

³¹ Trademark registered by Kent Precision Foods Group, Inc.

The Grand Jury recommends that additional educational materials be made available to all pregnant inmates relating to the importance of staying hydrated and the recommended daily water intake for pregnant women.

Jail Commissary

Commissary orders in the jail are privileges allotted to inmates to order and purchase items that are not available through normal provisions of supplies and meals. Inmates with funds allocated on their accounts may purchase an array of candy, snacks, stationary items, hygiene products, greeting cards, and beverages. With the wide array of items available to purchase, the Grand Jury noted that packaged water was not listed among the items available for purchase.

The Grand Jury recommends that packaged water units be added to the items available for purchase by inmates.

UTI

A urinary tract infection, or UTI, is an infection in any part of the urinary system, including the kidneys, bladder, ureters, and urethra.³² It is diagnosed based on the presence of a pathogen in the urinary tract with associated symptoms.³³ An estimated 11% of women in the United States report at least one physician-diagnosed urinary tract infection per year, and the lifetime probability that a woman will have a UTI is 60%.³⁴ UTIs occur in about 8% of pregnant women, and untreated UTIs can have serious consequences, including pyelonephritis (inflammation of the kidney), preterm labor, low birth weight, or sepsis.³⁵

For pregnant women in their first trimester, a 2011 Committee Opinion from the American College of Obstetricians and Gynecologists recommended sulfonamides and nitrofurantoin may be prescribed only if other antimicrobial therapies are deemed clinically inappropriate.³⁶

During its investigation, the Grand Jury learned through the cases reviewed that the rate of UTI among pregnant female inmates was as high as 65%. Nitrofurantoin was the most commonly prescribed medication for a UTI diagnosis.

The Grand Jury recommends that the CHS take a proactive approach, setting forth general guidelines and recommendations for all female inmates that will help them avoid UTIs in most instances. These guidelines can be conveniently divided into the categories of hygiene, clothing,

³² WebMD, <https://www.webmd.com/women/guide/your-guide-urinary-tract-infections>, last accessed 01/23/2020.

³³ American Urogynecologic Society, Best-Practice Statement: Recurrent Urinary Tract Infection in Adult Women, *Female Pelvic Med Reconstr Surg* 2018;24: 321-335.

³⁴ Treatment of urinary tract infections in nonpregnant women. ACOG Practice Bulletin No. 91. American College of Obstetricians and Gynecologists. *Obstet Gynecol* 2008;111:785-94

³⁵ Delzell JE Jr, Lefevre ML, Urinary tract infections during pregnancy. *Am Fam Physician* 2000;61:713-21.

³⁶ American College of Obstetricians and Gynecologist Committee on Obstetric Practice. ACOG Committee Opinion No. 494; sulfonamides, nitrofurantoin, and risk of birth defects. *Obstet Gynecol* 2011;117:1484-5.

diet, activities, and medications. Posting this information and/or adding it to the *Pregnant Inmate Rights* form will be impactful to this group. Most importantly, pregnant inmates should have access to a clean pair of underwear every day rather than two pair issued twice a week, per the standard issue clothing exchange that is currently being implemented.

Opioid Treatment Plan

Pregnant women with opioid use disorder (OUD) have unique health needs. Opioid use in pregnancy has escalated dramatically in recent years, paralleling the epidemic observed in the general population.³⁷ Maternal opioid use during pregnancy quadrupled from 1999 to 2014, from 1.5 per 1,000 to 6.5 per 1,000 delivery hospitalizations.³⁸ In addition to the effects of opioids on the pregnant woman herself, substance use during pregnancy is associated with higher rates of pregnancy complications including fetal growth restriction, placental abruption, preterm labor, or fetal death. These effects are directly due to substance abuse itself, and associated behaviors such as smoking, poor nutrition, lack of prenatal care, and needle sharing.³⁹

Due to these risks, screening for and treatment of OUD during pregnancy is of the utmost importance. Maintenance of opioid-assisted therapy can reduce the risk of withdrawal, which can precipitate preterm labor or fetal distress.⁴⁰ Pregnant women with opioid use disorders must not be detoxified, but must be offered opiate substitution therapy.⁴¹ Opioid-dependent patients, who abruptly stop using opioids, will suffer withdrawal symptoms such as severe nausea, vomiting, muscle aches, diarrhea, fever, dehydration, and insomnia as well as cravings that can occur when people first enter incarceration⁴². Thus, continued Medication Assisted Treatment (MAT) with methadone or buprenorphine throughout the duration of the pregnancy is considered

³⁷ American College of Obstetricians and Gynecologists Committee on Obstetric Practice & American Society of Addiction Medicine. (2017). Committee Opinion No. 71, Opioid use and opioid use disorder in pregnancy., *Obstet Gynecol* 2017; 130:e81-94.

³⁸ Haight, S. C., Ko, J. Y., Tong, V.T., Bohm, M.K., & Callaghan, W.M. (2018). Opioid use disorder documented at delivery hospitalization-United States, 1999-2014. *Morbidity and Mortality Weekly Report*, 67, 1-51.

³⁹ American College of Obstetricians and Gynecologists Committee on Obstetric Practice & American Society of Addiction Medicine. (2017). Committee Opinion No. 711: Opioid use and opioid use disorder in pregnancy. *Obstet Gynecol*, 13, e81-e94.

⁴⁰ ACOG Committee Opinion No. 511. *Obstet Gynecol* 2011;118; 1198-1202, 1199.

⁴¹ National Commission on Correctional Health Care, Position Statement: Women's Health Care In Correctional Settings (October 2014) www.ncchc.org.

⁴² Substance Abuse and Mental Health Services Administration. (2011). *Medication-assisted treatment for opioid addiction: Facts for families and friends* (HHS Publication No. SMA 09-4443). Rockville, MD. Retrieved from <http://www.californiamat.org/wp-content/uploads/2019/06/MAT-InfoFamilyFriends.pdf>

primary best treatment for OUD by ACOG,⁴³ American Society of Addiction Medicine,⁴⁴ the National Commission of Correctional Health Care,⁴⁵ and the World Health Organization.⁴⁶

The United States Supreme Court case *Estelle v. Gamble* established that correctional facilities are constitutionally mandated to tend to incarcerated individuals with “serious medical needs.”⁴⁷ Currently, pregnant inmates within the OCJ reporting opioid use shall be evaluated by a medical prescriber within 24-hours to avoid withdrawal during pregnancy. CHS clinical staff shall evaluate such inmates identified as chemical abusers using the Clinical Opiate Withdrawal Scale (COWS). Documentation shall include last dose, amount frequency, and whether or not dosing is prescribed.

Through its investigation, the Grand Jury learned that the OCJ complied with ensuring opioid dependent pregnant inmates have access to either a triage prescriber, or to a prescriber on-call within 24-hours of all new bookings.

Currently, there are two tracks of treatment plans for opioid dependent inmates.

1. Track 1- Methadone Maintenance
 - a. Requirements to include all of the following:
 - i. Currently receiving methadone maintenance from a methadone clinic
 - ii. Last dose of methadone is within 72-hours duration
 - iii. Methadone clinic is able to verify inmate’s last administered dose from a methadone clinic
2. Track 2- Medically Supervised Withdrawal
 - a. The following shall be referred to either a CHS Triage Prescriber or Prescriber On-Call within 24 hours to implement medically supervised withdrawal:
 - i. Methadone is non-prescribed/street drug
 - ii. Last dose of methadone maintenance received from a methadone clinic \geq 72 hours

⁴³ American College of Obstetricians and Gynecologists Committee on Obstetric Practice & American Society of Addiction Medicine. (2017). Opinion No. 711: Opioid use and opioid use disorder in pregnancy. *Obstet Gynecol*, 13, e81-e94.

⁴⁴ American Society of Addiction Medicine. (2015). *The national practice guideline for the use of medications in treatment of addiction involving opioid use*. Retrieved from <https://www.asam.org/docs/default-source/practice-support/guidelines-and-consensus-docs/asam-national-practice-guideline-supplement.pdf>

⁴⁵ National Commission on Correctional Health Care. (2016). *Substance use disorder treatment for adults and adolescents (Position statement)*. Chicago, IL. Retrieved from <https://ncchc.org/filebin/Positions/Substance-Use-Disorder-Treatment-2016.pdf>

⁴⁶ World Health Organization (2014). *Guidelines for the identification and management of substance use and substance use disorders in pregnancy*. Geneva, Switzerland: Author. Retrieved from <https://www.who.int/publications/i/item/9789241548731>

⁴⁷ *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

When released from jail, pregnant inmates on Track 1-Methadone Maintenance had a greater advantage over inmates being treated on Track 2-Medically Supervised Withdrawal. Track 1 patients were able to continue their opioid treatment post-release with their existing methadone clinic, whereas those on Track 2 lacked adequate discharge plans and links to services after their release.

The main difference noted during the Grand Jury's investigation was that the OCJ lacked adequate discharge plans upon an inmate's release from jail. OCJ must develop a process to assist inmates with health insurance applications prior to their release. It is unacceptable for the most vulnerable to navigate this complicated process without sufficient guidance.

Inmate Health Messaging Slips

To receive medical care outside regularly scheduled OB/GYN visits, inmates are required to complete an *Inmate Health Message Slip* to communicate specific health care needs or other pertinent information to security staff. These forms are collected at regular intervals during the day and or they can be delivered to the medical staff when medications are being dispensed. If an inmate considers her health needs to be urgent, the forms can be given to security personnel. The CHS clinical staff then triages the forms and refers urgent requests to clinical staff for immediate attention. The inmate is then referred to a CHS Prescriber immediately if problems relating to pregnancy are identified, such as abdominal cramping, vaginal spotting, fetal heart rate <120 or >160, or drug dependency associated with withdrawal. Non-urgent requests are logged electronically and addressed as staff is available.

Although the *Inmate Health Message Slip* has a blank space for recording the date the form was received, the Grand Jury's review of randomly selected slips noted that several were not dated, nor did they include the last four digits of the employee number as required by policy. Although the procedure for processing *Inmate Health Message Slip* was found to be adequate, the completed slips are not reviewed periodically to ensure that the procedure is being followed consistently.

In-Custody Deaths

There has never been a national systematic assessment of pregnancy outcomes that includes data on abortions, stillbirths, miscarriages, ectopic pregnancies, or neonatal and maternal deaths in prisons. In a 2016-2017 study of 753 live births, the following was observed⁴⁸:

- 92% were live births
 - 6% were preterm and 0.3% were very early preterm
 - 68% were vaginal births and 32% cesarean

⁴⁸ *Pregnancy Outcomes in US Prisons, 2016-2017*. Am J Public Health. 2019;109. 799-805: doi: 10.2105/AJPH.2019.305006.

- 8% were non-live births
 - 6% were miscarriages
 - 1% were abortions
 - 0.5% were stillbirths
 - 0.25 % were ectopic pregnancies

The Grand Jury reviewed a report on pregnant inmates who were sent to the hospital for treatment during incarceration in 2018 and 2019. In 2018, 13 pregnant inmates in the OCJ were sent to the hospital and all delivered successfully. In 2019, 14 pregnant inmates were sent to the hospital, where eight (57%) delivered successfully and 6, (43%) did not. Four of the pregnancies (29%) were ectopic (embryo implants somewhere other than the uterus, e.g. the fallopian tubes), which exceeds the national average indicated above.

In comparing the above report with inmates' health records and reports of custodial deaths, at least five hospitalizations were not included. Due to the shutdown of the county operations for the COVID-19 pandemic, the Grand Jury was not able to investigate the discrepancy further. The Grand Jury reviewed ten custodial deaths investigated by Orange County District Attorney's Office. Medical records were subpoenaed for these custodial deaths, of those, seven were not received before the county operations shutdown, and the three that were received are summarized below.

Inmate A

In reviewing in-custody death of Infant A, the Grand Jury learned the following facts:

- A 30-year-old pregnant inmate with an extensive history of mental health treatment, was arrested for trespassing. She was homeless and had no next of kin to be contacted.
- Nine days after being booked into OCJ, she suffered a fetal demise at 28-weeks pregnant.
- With no next of kin, Inmate A is unrepresented at the hospital for surrogate decisions on her behalf.
- Inmate A was given an epidural and was unable to ambulate.
- Doctors notated that Inmate A had been "cooperative".
- Inmate A was "shackled" in at least one place while in labor.
- Medical doctors repeatedly recommended that the deputy remove her shackles during her hospitalization, particularly since she was immobilized from her epidural during labor.
- The deputy did not comply with medical doctor's requests.
- Medical staff requested to speak with the deputy's commander about removing the inmate's shackles, but to no avail.
- Inmate A delivered a stillborn infant within hours after arriving at the hospital.

- The official cause of death is pending investigation by the Orange County Coroner's division.

Upon further investigation, the Grand Jury learned that female inmates do not have equal access to Patient's Rights Advocates to support or provide a voice to females receiving mental health services in jail, whereas the males being housed at Men's Central Jail (MCJ) receive regular visits from Patient's Rights Advocates. In addition, incarcerated males at the MCJ are provided pamphlet information on Rights for the Incarcerated Individuals Receiving Mental Health Services in the OCJ, posted in common areas for general access by the inmates. Inmate A, who had an extensive record of mental health issues at the OCJ, would have benefited greatly from access to an advocate overseeing her hospitalization care and possibly could have sidestepped certain decisions of deputies to shackle this inmate to her bed while she was in labor.

In addition, California Penal Code §3407 states in pertinent part:

(b) A pregnant inmate in labor, during delivery, or in recovery after delivery, **shall not be restrained by the wrists, ankles, or both**, unless deemed necessary for the safety and security of the inmate, the staff, or the public.

(c) Restraints shall be removed when a professional who is currently responsible for the medical care of a pregnant inmate during a medical emergency, labor, delivery, or recovery after delivery determines that the removal of restraints is medically necessary.

The Grand Jury made numerous requests to the OCSD to produce documentation justifying the decision to leave Inmate A shackled while in labor. This was in spite of medical staff's determination that restraints were "unnecessary" because Inmate A was unable to ambulate due to her receiving an epidural during labor. In reviewing the documentation provided, the Grand Jury concluded that the explanation for the use of restraints was grossly inadequate.

The Grand Jury recommends that contracted service personnel with the OCJ be provided with policies regarding the monitoring and securing of pregnant inmates.

Inmate B

In reviewing in-custody death of Infant Jane Doe, the Grand Jury learned the following:

- Inmate B was a 26-year-old Caucasian pregnant inmate being prescribed Subutex⁴⁹ at the OCJ.
- Six weeks after being booked into OCJ, she suffered a neonatal demise of a 25-week old baby girl.

⁴⁹ Trademark registered by Reckitt Benckiser Pharmaceuticals, Inc.

- Inmate B’s arrest record was requested from the OCSD, but it was not provided as of the publication of this report.
- Three weeks prior to the in-custody death of Infant Jane Doe, Inmate B had “desperately” requested to be tapered off her prescription of Subutex. A request was accommodated a week later.
- Inmate B went into preterm labor in her jail cell. She screamed and pleaded with staff for help. Staff consulted with her, gave her a Tylenol, and advised her to lay down.
- A short time later Inmate B’s contractions increased and staff ultimately called for an ambulance to transport her to the hospital.
- The first ambulance called was unable to accommodate Inmate B after 30 minutes of waiting. The reason for this was unclear.
- An hour after the first request, a second ambulance was summoned, and Inmate B was transported to the hospital, less than a three-mile drive.
- Inmate B delivered her baby in route to the hospital.
- Hospital records noted that Inmate B’s medical record was not available.

Upon further investigation, the Grand Jury learned that CHS is trained to provide appropriate care when a pregnant inmate is in labor, including prompt transport to a hospital. Inmate B was clearly in active labor and should have been afforded this right. Given the fact that Inmate B was a high risk pregnancy due to her pre-existing medical conditions, OCJ staff should not have hesitated to seek emergency transportation to the hospital.

OCSD should initiate training that insures that all personnel are properly trained and/or certified to perform the types of health care they may be called upon to perform. Staff and facilities should be periodically audited to insure they are prepared to handle the complications of pregnancy at all times. This would increase the quality of care for pregnant inmates and reduce County liability.

Inmate B made multiple requests through the jail’s Miscellaneous Messaging Slip to be seen for urgent medical concerns she had. Three times she was unable to be seen by the OB/GYN over a course of two weeks. Her first request was denied because the doctor had too many patients ahead of her. Her second request was denied because the OB/GYN had too many emergency calls pending. Finally, Inmate B missed her scheduled OB/GYN appointment because she had to appear in court. With only one part-time OB/GYN accessible to pregnant inmates in the jail, the Grand Jury recommends that OB/GYN coverage be increased in the women’s jail.

Inmate C

- Inmate C was a pregnant 29-year-old Caucasian who delivered a 25-week stillborn fetus in her jail cell.

- Inmate C began experiencing contractions and pressed the emergency button in her jail cell to summons a nurse.
- CHS staff did not consult with the on-site OB/GYN or the CHS Prescriber as symptoms of preterm labor worsened.
- Inmate C was instructed to lay down, rest, and to drink more water.
- A few hours later, Inmate C pressed the emergency call button again because she was experiencing stronger stomach cramps and vaginal bleeding.
- Inmate C was moved to the Female Observation Unit (FOU).
- A short time later in the FOU, Inmate C gave birth while sitting on the toilet in her cell.
- Orange County Sheriff-Coroner's office determined the cause of death to be: *Intra-uterine fetal demise associated with placental infarction and chorioamnionitis*.
- After the demise of her baby, Inmate C had to ration her pads because staff gave her only a few per day to help with bleeding.
- Inmate C submitted a Miscellaneous Message Slip to CHS to request additional pads as heavy bleeding continued. Her request was approved nearly one month later.

Inmate C required closer monitoring of medical care from the onset of her incarceration and should have been considered a high-risk pregnancy due to her preexisting health conditions. Inmate C was not sent to the hospital when she first experienced pre-labor symptoms. The delay in calling for emergency service by staff is contrary to CHS Preterm Labor Guidelines procedures.

Conclusion

The processing of pregnant inmates at Orange County Women's Jail, and the maternal health care provided them demonstrate inconsistent quality of care. The purpose of this report was to investigate the quality of care afforded to a vulnerable sector of the inmate population during an extremely stressful time in their lives. For proper care and placement of female inmates, a confirmation of pregnancy must be made as soon as possible upon arrival at the jail setting. Without this information, an inmate cannot be properly housed, restrained (if required), medically assessed and treated, and properly nourished. Changes in the intake process, together with increased attention to details and particulars of each incoming inmate will assure greater safety, while reducing the County's exposure to potential liability.

The custodial and medical care given to pregnant inmates must be monitored and the performance of personnel providing the care must be audited to ensure that pregnant inmates receive the care set forth in the approved policies, procedures, and regulations.

With these thoughts in mind, the 2019-2020 Orange County Grand Jury respectfully submits the following Findings and Recommendations with the hope they will serve to ensure quality care for pregnant inmates housed in Orange County jails.

FINDINGS

In accordance with California Penal Code §§ 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 and report titled *Maternal Health Care While Incarcerated*, the 2019-2020 Orange County Grand Jury made 26 principal findings, as follows.

- F1. The 2018-2019 Grand Jury recommended that four interview cubicles be constructed by the Orange County Sheriff's Department at the Intake Release Center. The Orange County Sheriff's Department agreed with that recommendation. However, as of the date of the publication of this report, the construction of the four cubicles had not been completed.
- F2. The *Statement of Booking Officer* form does not question if an arrestee is or could be pregnant when processed into the Orange County Jail, potentially resulting in inmates receiving the wrong care and/or placement.
- F3. Taking blood pressure when an arrestee is handcuffed behind the back could result in an inaccurate reading, potentially resulting in improper care and/or placement.
- F4. All the printed reports of pregnant inmates' electronic medical records were found to be incomplete with missing data.
- F5. Correctional Health Services routinely performed pregnancy testing during the intake booking process.
- F6. Correctional Health Services consistently issued pink tags (wristbands) during the intake booking process identifying inmates as pregnant or possibly pregnant.
- F7. Although pregnant inmates were correctly identified by Correctional Health Services during the intake booking process with a pink tag (wristband), they were not consistently assigned to a low bunk or a low tier as is required for pregnant inmates.
- F8. At the time of the Grand Jury's visit to the Women's Central Jail, inmates were not issued pink pants to identify them as being pregnant as is required by the current Clothing Identification system.
- F9. The *Pregnant Inmate Information* form does not include all of the required standards and policies governing pregnant inmates.

- F10. Medical care refusal acknowledgement forms were not correctly completed in that the signature line was blank with neither the inmate's signature nor a staff notation of "refused" indicating that the inmate refused to sign the form.
- F11. Pregnant inmates were not consistently provided an extra mattress if pregnancy was ≥ 26 weeks as required.
- F12. There are irregularities with respect to enforcement of the newly implemented policy prohibiting the use of waist restraints on pregnant inmates.
- F13. Many inmates choose to launder their clothes in their cells between scheduled clothing exchanges.
- F14. Once identified as pregnant, Correctional Health Services provides daily prenatal vitamins to inmates.
- F15. Orange County Sheriff's Department Food Services Unit has modified the standard diet for pregnant inmates to address their nutritional dietary needs.
- F16. Dehydration is common among pregnant inmates in the Central Women's Jail.
- F17. Individual units of water are not available for purchase at the jail commissary.
- F18. Based on the cases that were provided to the Grand Jury to review, the rate of Urinary Tract Infection among pregnant inmates in the Central Women's Jail was as high as 65%.
- F19. Orange County Jail complied with ensuring that opioid dependent pregnant inmates have access to either a triage prescriber or to a prescriber on-call within 24-hours of all new bookings.
- F20. Not all opioid-dependent pregnant inmates receive adequate discharge plans and linkage of services upon their release from jail.
- F21. *Inmate Health Message Slip(s)* were not consistently documented by Correctional Health Services with date and employee number.
- F22. Although male inmates have access to Patient's Rights Advocates, female inmates do not have equal access to Patient's Rights Advocates.
- F23. Contracted service providers are not aware of and do not have access to the Orange County Jail policies regarding the monitoring and securing of pregnant inmates.
- F24. Orange County Sheriff's Department may be required to provide emergency medical care to pregnant inmates.

- F25. Health Care Agency contracts with one OB/GYN doctor to provide services at the Central Women's Jail only two days a week.
- F26. Although Correctional Health Services policy states that they "shall keep a list of all pregnancies and their outcomes" for inmates who were less than 20 weeks pregnant, Correctional Health Services did not track the outcomes for these pregnancies.

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 and report titled *Maternal Health Care While Incarcerated*, the 2019-2020 Orange County Grand Jury makes the following 21 recommendations.

- R1. The Orange County Grand Jury recommends that the Orange County Sheriff's Department be monitored for the completion of the reconfiguration on the screening area at the Intake Release Center by newly scheduled date of December 2020. (F1)
- R2. The Orange County Grand Jury recommends that the Correctional Health Services amend the *Statement of Booking Officer* form to include a question about pregnancy when processing female arrestees into the Orange County Jail. (F2)
- R3. The Orange County Grand Jury recommends that taking inmate's blood pressure readings with their body in a position that will result in accurate readings thereby leading to proper placement and care. (F3)
- R4. The Orange County Grand Jury recommends that Correctional Health Services provide training for jail staff to properly and accurately complete required forms and to audit the completion of these forms to assure accuracy. This will increase inmate safety and reduce County potential liability stemming from incomplete inaccurate records. (F4, F10)
- R5. The Orange County Grand Jury recommends that pregnant inmate's records be audited to ensure that they receive the accommodations to which they are entitled to. (F7, F11)
- R6. The Orange County Grand Jury recommends that pregnant inmates be consistently issued pink pants to accurately identify their classification. (F8)
- R7. The Orange County Grand Jury recommends that the *Pregnant Inmate Information Standards* form be revised and updated to reflect jail standards and policies governing

- pregnant inmates to include an inclusive list of rights to which pregnant inmates are entitled. (F9)
- R8. The Orange County Grand Jury recommends that female inmates be informed of their rights with respect to consenting and testing for alcohol and/or drugs and whether the test results will be kept confidential or if the results will be reported to the County of Orange Social Services Agency (F9)
- R9. The Orange County Grand Jury recommends that OCJ provide clean undergarments (i.e., underwear) for each day of the week for female inmates. (F13)
- R10. The Orange County Grand Jury recommends that inmates be advised that the only way to reliably remove organisms that can cause disease from clothes is to use the institutional laundry. (F13)
- R11. The Orange County Grand Jury recommends that pregnant inmates' weight be consistently tracked to assure they are receiving adequate nutrition. (F4)
- R12. The Orange County Grand Jury recommends that educational materials be made available to all pregnant inmates relating to the importance of staying hydrated and the minimum recommended daily water intake during pregnancy. (F16)
- R13. The Orange County Grand Jury recommends that individual units of water be available for purchase at the jail commissary. (F17)
- R14. The Orange County Grand Jury recommends that the Correctional Health Services take a proactive approach on establishing guidelines and recommendations for all female inmates that will help them avoid Urinary Tract Infections. (F18)
- R15. The Orange County Grand Jury recommends that all opioid-dependent pregnant inmates receive adequate discharge plans and linkage to support services upon release from jail. (F20)
- R16. The Orange County Grand Jury recommends that the *Inmate Health Message Slip* be "hard stamped digitally" (not hand-written or left blank) to ensure that procedures are being consistently followed and inmate health care needs are being addressed. (F21)
- R17. The Orange County Grand Jury recommends that female inmates have equal access to Patients' Rights Advocates as the male inmates do. (F22)
- R18. The Orange County Grand Jury recommends that contracted service providers with the Orange County Jail be provided with policies regarding the monitoring and securing of pregnant inmates. (F23)

- R19. The Orange County Grand Jury recommends that the Orange County Sheriff's Department conduct training that insures that all personnel are properly trained and certified to perform the type of health care, including childbirth, that they may be called on to perform. (F24)
- R20. The Orange County Grand Jury recommends that all pregnancy outcomes occurring during incarceration be tracked. (F26)
- R21. The Orange County Grand Jury recommends that all jail personnel be regularly trained on policies for pregnant inmates and that activities be supervised to ensure compliance. (F7, F8, F11, F12)

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

Orange County Board of Supervisors	F1-26
Orange County Sheriff-Coroner	F1, F7, F8, F11, F12, F13, F15, F16, F17, F23, F24

Recommendations

Orange County Board of Supervisors	R1-21
Orange County Sheriff-Coroner	R1, R5, R6, R9, R10, R13, R18, R19, R21

Responses Requested

Responses are requested from the following non-elected agency or department heads:

Findings

Orange County Health Care Agency	F22, F23, F25
Correctional Health Services	F2, F3, F4, F5, F6, F7, F9, F10, F11, F14, F18, F19, F20, F21, F22, F23, F26

Recommendations

Orange County Health Care Agency	R17, R18
Correctional Health Services	R2, R3, R4, R5, R7, R8, R11, R12, R14, R15, R16, R18, R20

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GLOSSARY

ACOG	The American College of Obstetricians and Gynecologists
BMI	Body Mass Index
CCR	California Code of Regulations
CHS	Correctional Health Services
COVID-19	Corona Virus Disease-19
COWS	Clinical Opiate Withdrawal Scale
CWJ	County Women's Jail
FOU	Female Observation Unit
HCA	Health Care Agency
hCG	Human Chorionic Gonadotropin
IRC	Intake Release Center
IUP	Intrauterine Pregnancy
JAMF	James A. Musick Facility
MAT	Medication Assisted Treatment
mcg	Microgram
MCJ	Men's County Jail
MMS	Miscellaneous Messaging Slip
OCJ	Orange County Jail
OCSD	Orange County Sheriff's Department
ODU	Opioid Use Disorder
PC	Penal Code
SOBA	Statement of Booking Agency
UDS	Urine Drug Screen
UTI	Urinary Tract Infection

**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.^{1,2} 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.³ 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 requite its

¹ CA State Legislature Chapter 708, Statutes 1984, Section 66484.3

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

³ 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.⁴

Early in the JPA development process, a Major Thoroughfare and Bridge Fee Program⁵ (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.⁶

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 eight⁷ 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

⁴ 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.

⁵ 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.

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

⁷ 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)⁸ 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)⁹
10. Review contracts let by the TCA.

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

⁹ 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.

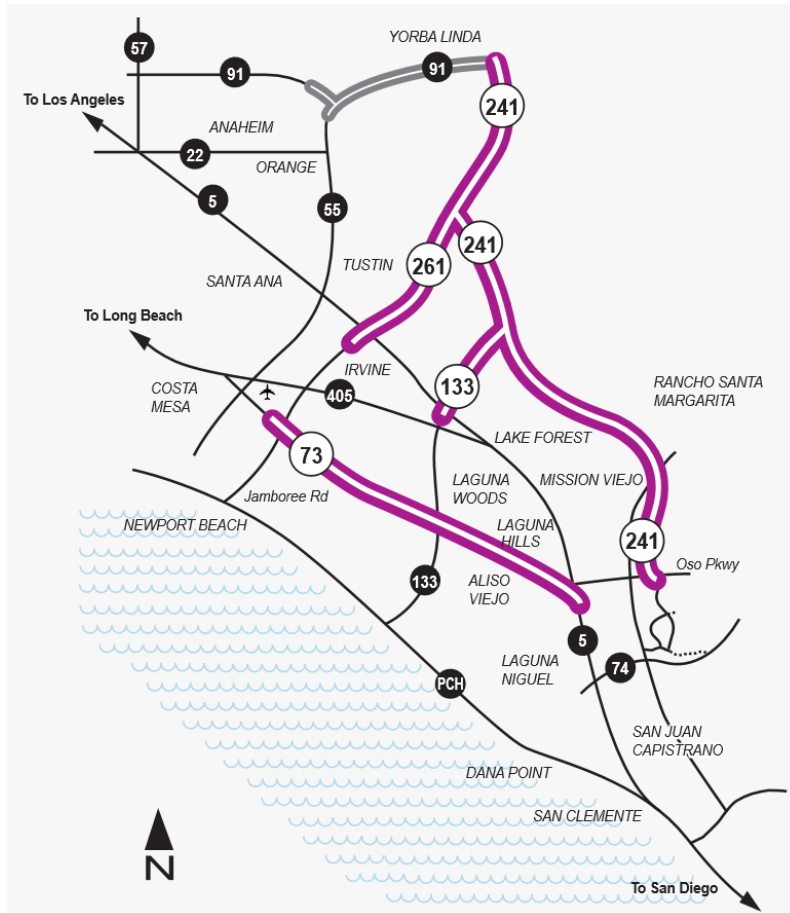
An exactly parallel model was used to establish the Foothill/Eastern Transportation Corridor Agency (F/ETCA) with representation from the county of Orange and the cities of Anaheim, Dana Point, Irvine, Lake Forest, Mission Viejo, Orange, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Santa 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, 2002¹⁰ 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)¹¹ which defined the corridors as SR-73, 133, 241, and 261

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

¹¹ 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.”¹² As cited in the TCA legislative enabling documents,

¹² 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.¹³ 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.¹⁴ 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,

¹³ Ibid, p. 2, footnote 3

¹⁴ 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 22.¹⁵ 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

¹⁵ 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 Project¹⁶ 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),¹⁷ 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.¹⁸ 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

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

¹⁷ 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.

¹⁸ 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.¹⁹ 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 years²⁰, in July 1997, it was voted that the annual rate increase for the F/ETCA would be set at 2.206% and for the

¹⁹ 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.

²⁰ 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.²¹ 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).²²

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 SJHTCA²³). 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.²⁴

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

²¹ 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

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

²³ 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.

²⁴ 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.²⁵

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.²⁶ 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.

²⁵ See Appendix 1 for a more complete table

²⁶ “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 \$2.419B²⁷ 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 \$3.264B²⁸ in costs that was supposed to be completely

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

²⁸ Per Center for Innovative Finance Support

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.²⁹

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)³⁰
- 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 2.³¹

²⁹ 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.

³⁰ 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.

³¹ See Appendix 2.

Table 2. Potential SJHTCA bond payoff dates

Bond	Payoff Date
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.³² 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

³² 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.³³ 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.

³³ 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.”³⁴ 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

³⁴ <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.

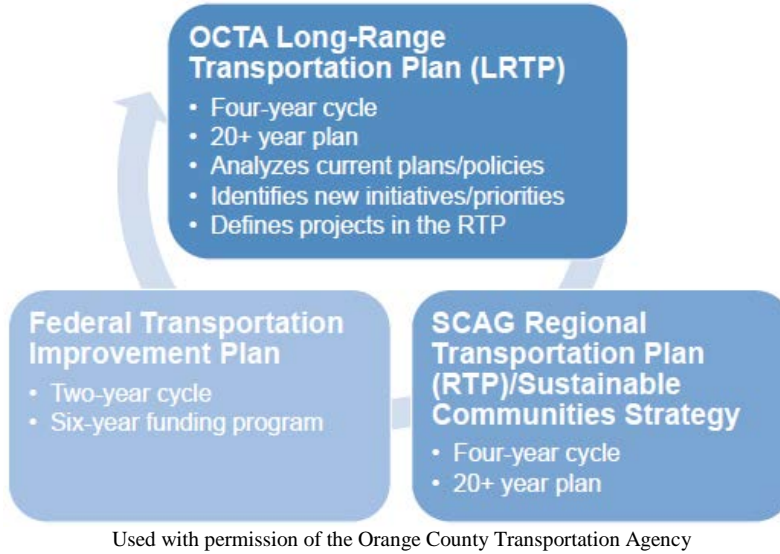


Figure 2. OC Transportation Planning

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.

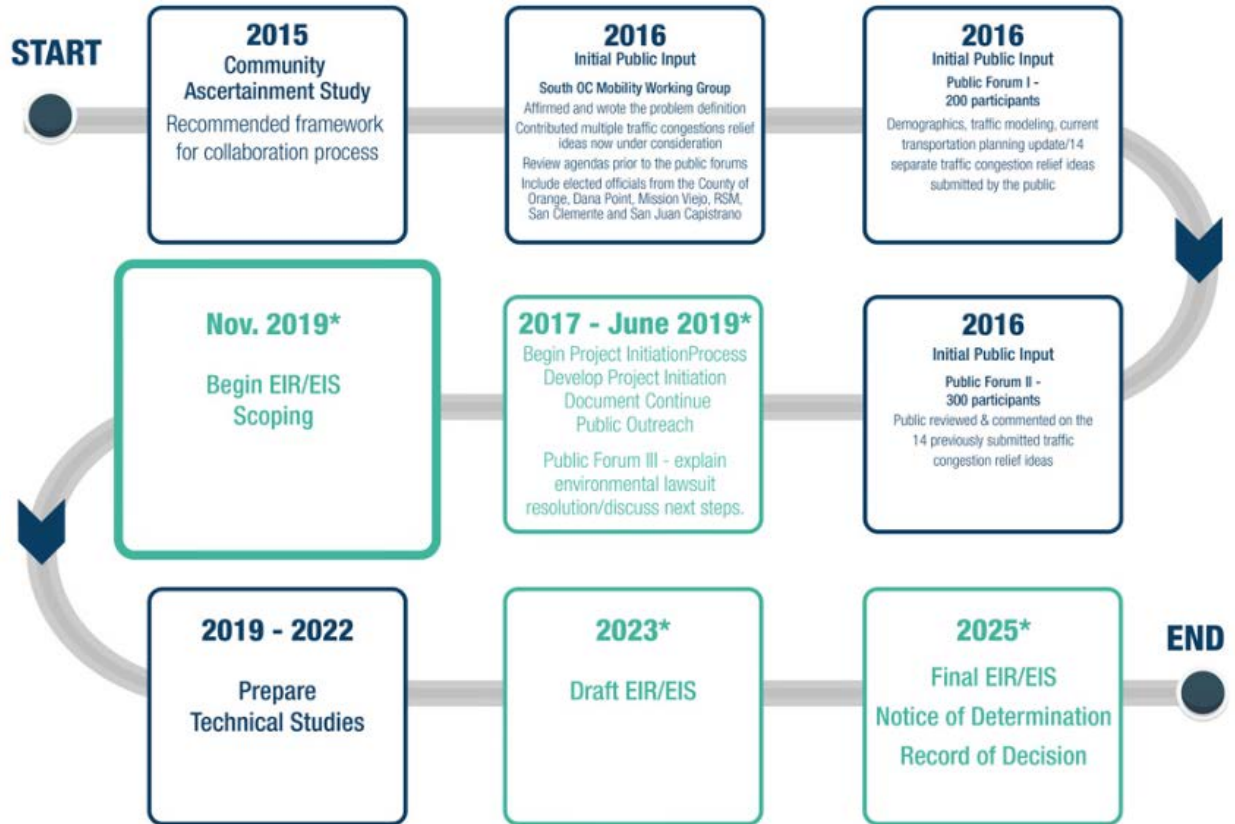


Used with permission of the Orange County Register

From <https://www.ocregister.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.



Used with permission of the Transportation Corridor Agencies

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.



Used with permission of the Transportation Corridor Agencies
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.³⁵ 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:

³⁵ 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
TOTALS		\$19,712,393	\$0	\$11,432,812

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	
TOTALS		\$2,139,500	\$432,000	\$420,000

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
TOTAL		\$2,374,000	\$0	\$3,384,440

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Table 4. FY21 Proposed Budget by Agency

Part 1 - Capital Improvement Projects	SJH FY21 Budget	F/E FY21 Budget
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
Totals	\$564,500	\$19,147,893
Part 2 - Engineering Department Department Staffing, Maintenance & Repair	SJH FY21 Budget	F/E FY21 Budget
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
Totals	\$899,000	\$1,240,000
Part 3 - Facilities and Pacifica Building	SJH FY21 Budget	F/E FY21 Budget
Facilities	\$0	\$2,300,000
Pacifica Building Improvements (deferred)	\$0	\$0
Totals	\$0	\$2,300,000

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Recently Completed Projects

Many recently completed projects are listed below from the TCA website.³⁶ 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.

³⁶ 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 legislation³⁷ 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 website³⁸ 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

³⁷ Ibid. CA State Legislature Chapter 708, Statutes 1984, Section 66484.3

³⁸ 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;”³⁹ “Begin to develop a long-term strategy that helps reposition the TCA and its leadership;”⁴⁰ “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;”⁴¹ and “expanding CEO outreach, develop and implement media strategies to meet objectives and improve public opinion of the Agency.”⁴² 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

³⁹ K000867 Letter of Agreement between TCA and California Strategies, LLC, August 20, 2013

⁴⁰ Ibid

⁴¹ K000883 Letter of Agreement between TCA and Stan Oftelie, October 29, 2013

⁴² 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.^{43,44,45} 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."⁴⁶

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 letter⁴⁷ dated March 12, 2019 to Governor Gavin Newsom voicing

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

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

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

⁴⁶ See TCA contract K000867.

⁴⁷ Appendix Reference 5.

concern about overspending and misuse of public funds as reported by the Los Angeles Times.⁴⁸ 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 letter⁴⁹ dated April 23, 2019 with Laguna Beach’s Harley Rouda, US Congressman representing the 48th 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 letter⁵⁰ 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 letter⁵¹ 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 74th District (Central Coastal OC), sent a letter⁵² 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

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

⁴⁹ Appendix Reference 6.

⁵⁰ Appendix Reference 7.

⁵¹ Appendix Reference 8.

⁵² 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 meeting⁵³. 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 76th District (North San Diego County), proposed AB 382⁵⁴ 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, 2018.⁵⁵

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

⁵³ 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>

⁵⁴ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB382

⁵⁵ 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 73rd District (South OC), proposed a similar bill, AB 1273,⁵⁶ 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, 2020.⁵⁷ (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.⁵⁸ The Grand Jury learned that other TCA critics believe they have been

⁵⁶ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1273

⁵⁷ See the “Bill Analysis” tab on the web page for detail.

⁵⁸ 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^{59, 60} 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.^{61, 62}

SB 1373, 2019-2020 Session

Pat Bates, State Senate member representing the 36th District (Long Beach) proposed SB 1373⁶³ 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

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

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

⁶¹ Ibid., TCA meeting of March 12, 2020.

⁶² See Appendix 8 for a partial transcript of Mr. Beall's comments

⁶³ 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.

		San Joaquin Hills TCA			
		Projections based on annual increase of 2.667%			
		2019	2029	2039	2050
Single Family (per unit)	Zone A	\$5,740	\$7,274	\$9,465	\$12,757
	Zone B	\$4,448	\$5,637	\$7,334	\$9,886
Multi-Family (per unit)	Zone A	\$3,343	\$4,237	\$5,512	\$7,430
	Zone B	\$2,595	\$3,289	\$4,279	\$5,767
Non-Residential (per sq ft)	Zone A	\$7.69	\$9.75	\$12.68	\$17.09
	Zone B	\$5.68	\$7.20	\$9.37	\$12.62
		Foothill/Eastern TCA			
		Projections based on annual increase of 2.206%			
		2019	2029	2039	2052
Single Family (per unit)	Zone A	\$5,925	\$7,211	\$8,969	\$11,911
	Zone B	\$4,448	\$5,637	\$7,334	\$10,326
Multi-Family (per unit)	Zone A	\$3,460	\$4,211	\$5,238	\$6,955
	Zone B	\$2,595	\$3,289	\$4,279	\$6,025
Non-Residential (per sq ft)	Zone A	\$7.69	\$9.75	\$12.68	\$17.85
	Zone 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															
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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 OFFICE 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 report¹ 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

¹ 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."¹ 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*¹ 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

¹ Elmalrek, 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
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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
74th 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.'"

OC Recycling: Doing it the Right Way



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SUMMARY

The California legislature has enacted waste and recycling laws increasingly aimed at diverting the total amount of waste going to local landfills. Assembly Bill (AB) 939 enacted the California Integrated Waste Management act over 30 years ago because of an increase in waste stream and a decrease in landfill capacity. With recycling laws and mandatory recycling becoming more widespread, local jurisdictions are required to comply by implementing more and more programs. In an attempt to meet legislative mandates, Orange County cities and Orange County Waste & Recycling (OCW&R) have contracts with private waste management companies to include recycling education for residents and businesses.

Despite all good legislative intentions, there remains the modern day reality of recycling costs, sustainability of current programs and the growing need for new programs to keep up with new laws. Most recently, the international economic markets for recycling have diminished significantly. Revenues once generated from recyclables no longer offset the hauler's expenses to handle waste. Waste management companies face higher costs associated with sorting and processing trash at Material Recovery Facilities (MRF) while landfill management is working on ways to extend the life of Orange County Landfills. Declining recycling revenues combined with the increased processing costs, will be passed onto consumers in the form of higher waste collection bills as these realities come to fruition. Because of the COVID 19 pandemic, we are seeing an increased use of packaging materials, disposable paper and plastic utensils, prepackaged produce and bulk items at the grocery stores, single use plastic bags, curbside service packaging and more goods shipped directly to consumers. They all exacerbate the waste disposal problems. If trends continue, by 2050 there will be 12 billion metric tons of plastic in national landfills.¹

The Grand Jury found that 90% of cities surveyed have sole sourced their waste contracts for anywhere from 39 to 72 years with the same waste hauler. Failure to test the marketplace for competitive pricing may have led to current residential rates that vary from \$12.48 to \$23.47 per month. Similar variances exist with commercial services. Further, 80% of the surveyed cities do not have a robust recycling program for multi-family units leading to increased sorting costs for the MRF facilities and more waste being sent to landfills. While educational material exists to help businesses and residents learn what to recycle, the Grand Jury found dissemination of this information to be spotty and in most cases, incomplete, particularly for single use plastic shopping bags.

¹ Science: <https://www.howstuffworks.com/>

REASON FOR THE STUDY

Residents and businesses in Orange County commonly go about their regular routines in throwing away everyday waste. Public perceptions have been that recycling simply comes down to knowing what is recyclable, what waste is, and what goes where. Many households obligingly separate their trash but are not always certain which container is the right one to dispose of an article. The confusion is understandable given the material composition and multitude of objects thrown away in our society. The Grand Jury was interested in how local jurisdictions reach out to educate the public on the significance of recycling, the availability of information on the proper sorting of waste, and how changing industry demands could affect people's everyday habits and the rates they pay.

Following AB 939, ever more stringent requirements have been mandated by AB 341 (recycling programs for businesses and multi-family complexes), AB 1826 (business organic waste recycling) and Senate Bill (SB) 1383 (residential organic waste recycling). The Grand Jury wanted to ascertain the level of compliance by municipalities and how prepared they are to meet these mandates for residents, businesses and multi-family complexes.

METHOD OF STUDY

The Grand Jury participated in tours of the three Orange County active landfills: Prima Deshecha landfill located in San Juan Capistrano, Olinda Alpha in Brea, and the Frank R. Bowerman landfill in Irvine, all owned and operated by the County of Orange and managed by OCW&R. This enabled the Grand Jury to gain a better understanding of the refuse collection and disposal process.

The Grand Jury participated in a tour of the MRF operated by the private company, Waste Management, located at 2050 North Glassell Street, Orange, CA 92865.

The Grand Jury reviewed the legislation contained in AB 341, 939, 1594, 1826 and in SB 1383 and 270 as well as Prop 67 for an understanding of the mandates the cities, county and private trash haulers operate under.

The Grand Jury searched the internet and reviewed articles from the sites of CalRecycle (the state agency created by AB 939), OCW&R, and the Environmental Protection Agency (EPA), as well as from various sources relating to the trash hauling and the overall operations of the waste and recycling industry.

The Grand Jury identified a sampling of ten cities throughout the county as well as the County of Orange (unincorporated areas) that have agreements with all of the major private trash hauling companies servicing Orange County. The cities selected ranged from Brea in the north to Dana

Point in the south with a variety of larger (Santa Ana, Irvine) and smaller (Buena Park, Mission Viejo) cities in different geographical areas of the County. The Grand Jury thereupon requested, received, and reviewed all city and county legal contracts between the government entities and private trash haulers, and conducted interviews with city and county contract administrators on the following key contract elements:

- Current residential and commercial rate schedules
- Start and end dates of the contracts
- Date the hauler(s) began servicing the government entity
- Colors of the residential carts
- Recycling educational materials to be provided by the haulers including website hosting, flyers, billing inserts, and recycle cart instructions
- Insurance coverage for liability, auto and truck and workman's compensation
- Proof of funding for performance bonds, if contractually required
- Date of last audit by the municipality of contract terms
- Indemnification by the haulers of municipalities
- Responsible party for billing residential customers

The Grand Jury conducted interviews with waste management and recycling companies (waste haulers) that service the cities investigated.

BACKGROUND AND FACTS

California legislation is pointing the county landfills toward a Resource Recovery Facility model: this means providing recycling and diversion operations in addition to landfilling. If we all bring the right things to the landfill, we will reduce the amount of waste that we have on this earth. Over the past few decades, the California state legislature's environmental concerns led to the passage of laws that established solid waste diversion rates that significantly extend the useful life of regional landfills and, in effect, established recycling requirements for local jurisdictions. The legislature in more recent years has also focused on recycling as a part of the state's efforts to address climate change at the local level. Table 1 summarizes the significant legislation affecting local recycling efforts.

Table 1. Summary of regulations shaping the future of the waste and recycling industry

Legislation	Year Enacted	Effect on local Jurisdiction	Fines for failing to comply
AB 939 Integrated Waste Management Act (IWMA)	1989	Each jurisdiction in California is required to divert at least 50 percent of its waste away from landfills, whether through waste reduction, recycling or other means. Local jurisdictions are required to enact plans and implement recycling programs to divert 25% by 1995 and 50% of their solid waste from landfills by January 1, 2020.	\$10,000 per day for local jurisdictions that fail to submit an adequate element or plan or fails to implement a Source Reduction and Recycling Element (SRRE) or Household Hazardous Waste Element to CalRecycle.
AB 341 Mandatory Commercial Recycling	2011	The Mandatory Commercial Recycling Measure (MCRM) focuses on increased commercial waste diversion away from landfills to reduce Green House Gas (GHG) emissions. The MCRM is designed to achieve a reduction in GHG emissions of 5 million metric tons of carbon dioxide (CO ₂) equivalents. To achieve the measure’s objective, an additional 2 to 3 million tons of materials must be recycled annually from the commercial sector by the year 2020 and beyond. AB 341 requires businesses, public entities and multi-family complexes to establish a recycling program to achieve a statewide 75 percent waste diversion goal by 2020.	Maximum fine set at \$10,000 per day.
AB 1594 Green Material used as ADC	2014	In September 2014, Governor Brown signed Assembly Bill (AB) 1594 (Williams, Chapter 719, Statutes of 2014), mandating that as of January 1, 2020, the use of green material as alternative daily cover (ADC) will no longer constitute diversion through recycling. ADC will instead be considered disposal in terms of measuring a jurisdiction’s annual 50 percent per capita disposal rate (Public Resources Code (PRC) Section 41781.3). Landfills no longer get diversion credit for Alternate Daily Cover (ADC).	Maximum fine set at \$10,000 per day.

Legislation	Year Enacted	Effect on local Jurisdiction	Fines for failing to comply
		Beginning in 2020, local governments can no longer use Processed Green Material (PGM) as ADC.	
AB 1826 Mandatory commercial organics recycling	2014	Imposes requirements for recycling organic waste. Business that generate a specified amount of organic waste per week must send it to organic waste recycling services starting 2016. In addition, local jurisdictions are required to adopt an organic waste recycling program and report to CalRecycle on progress. First, CalRecycle must determine if the statewide disposal of organic waste has not been reduced by 50 percent of the level of disposal during 2014, pursuant to PRC Section 42649.81(a)(4): “On or after January 1, 2020, if the department determines that statewide disposal of organic waste has not been reduced to 50 percent of the level of disposal during 2014, a business that generates two cubic yards or more per week of commercial solid waste shall arrange for the organic waste recycling services specified in paragraph (3), unless the department determines that this requirement will not result in significant additional reductions of organics disposal.”	Maximum fine set at \$10,000 per day.
SB 1383 Education and Outreach Resources	2016	Organics Diversion and Edible Food Recovery This bill uses methane emissions reduction as the driving force for organic waste diversion and edible food recovery. The two-part bill seeks to reduce organic waste by 75% and recover 20% of edible food for human consumption by 2025.	Enforcement and penalties begin in January 1, 2022. See Bill SB 1383 for specifics
Prop 67 SB 270	2016 2020	California voters approved proposition 67, banning single use plastic carry out bags—state law. Ban on Single Use Carry out bags Until 2020, existing law required an operator, owner, or manager of a store or business, as defined, to establish an on property	A store or producer of reusable grocery bags that violates the law may be fined \$1,000 per day for the first violation, \$2,000 per day for the second violation, and \$5,000 per day

Legislation	Year Enacted	Effect on local Jurisdiction	Fines for failing to comply
		<p>courtesy recycling program that provided to customers the opportunity of returning clean plastic carryout bags to that store.</p> <p>Due to the COVID 19 pandemic and the necessary physical distancing measures, businesses are using single use plastic bags without penalty. And no longer allowing customers to use their recyclable reusable bags.</p>	<p>for the third and subsequent violations. -</p> <p>Per Executive Order N-54-20 signed April 22, 2020, Public Resources Code section 42283 is suspended for a period of 60 days, (starting April 22, 2020 and ending June 22, 2020).</p>

These legislative efforts have had a significant effect on the amount of waste diverted from landfills. In 1989 before the enactment of AB939, the state was only diverting about 10 percent of solid waste from landfills. A generation later, California diverted an estimated 63 percent of trash from landfills in 2016.²

² Source: <https://www.calrecycle.ca.gov/>

Landfill Management: OC Waste and Recycling

There are three active landfills within the County (Olinda Alpha, Frank R. Bowerman, and Prima Deshecha). The county department responsible for managing and operating these landfills is OCW&R. The three landfills are the final destination of all non-hazardous solid waste.

Typically, the three landfills accept approximately 16,900 tons of trash per day.³

The biggest impact to these landfills is attributable to recycling legislation enacted in the past decade. In trying to meet the AB 341 goal of recycling 75 percent of its waste by 2020, the passage of AB 1594 presents even greater challenges in reaching such an ambitious target because it does not allow certain materials that are currently counted as “diversion,” i.e., green waste used as alternate daily cover at landfills. As indicated in the Director’s Message in the 2019 OC Waste and Recycling Annual Report, OCW&R... “spent much of 2019 developing plans and building relationships toward a regional solution for the imminent, industry-transforming legislation and to augment the lack of organics recycling infrastructure. Assembly Bill 1594 and Senate Bill 1383 are reshaping the waste and recycling industry. The shifts in our industry have never been more monumental.”⁴ The impact of the various Table 1 legislative efforts is discussed in the following sections of this report.

Organic Waste – Environmental Impact

California leads the nation in environmental legislation based on initiatives designed to protect people and preserve natural resources. Recycling is among these initiatives. However, recycling no longer means just bottles, cans and newspapers. The newest legislation expands recycling to include the diversion of organic waste –materials that come from living things, largely plants and food. Organics is a large portion of the waste stream (about a third). The decomposition of leaves, grass, food and other organic waste produces methane gas in landfills. It has been found that landfills are the third largest source of total methane throughout the country, and food waste alone accounts for about 18 percent of landfill disposal. (Source: CalRecycle). Methane gas is also known as greenhouse gas because it has an extreme heat-trapping capability that is destructive to the atmosphere.

To address the problem of greenhouse gases, California enacted AB 1826 in 2014 and targeted a 50 percent reduction in the landfill disposal of organic waste by the year 2020. Beginning in 2016, restaurants, supermarkets, large public venues and food processors were required to separate food scraps and green waste for organic recycling. This created a challenge for the trash haulers who had to collect the organic material and dispose of it in a cost effective manner, or pass on these costs as increased fees for ratepayers. In its investigations, the Grand Jury toured a

³ 2017-2018 O.C. Grand Jury Report, Talking Trash, Pg. 6.

⁴ OC Waste & Recycling 2019 Annual Report

MRF and discovered the waste hauler had developed and built a proprietary processing infrastructure to handle food waste collected from businesses.

In 2016, SB 1383 increased the landfill organic reduction target to 75 percent by 2025. By 2022, SB 1383 requires all organic waste generators, both residents and businesses, as well as non-local entities and local education agencies, to participate in organic material collection programs. In addition, local jurisdictions were required to adopt enforceable ordinances to ensure that all residential and commercial generators are compliant. Beginning in 2022, CalRecycle can assess penalties for noncompliance.

Only two of the ten cities surveyed have a residential organics collection service (i.e. food waste collection). All cities will eventually need to implement organics collection programs to meet these goals by 2022. Local jurisdictions will be required to provide collection service automatically to all generators (also known as universal service). At this time, most of the county's jurisdictions already have residential organics collection service for green waste. Since the SB 1383 residential food waste collection requirements will affect all residents, cities and the county will need to work with the waste industry to educate and inform many Orange County households and multi-dwellings on properly sorting and disposing of their food waste into new or different containers.

Rising Industry Costs and Waste Disposal Rates

In today's trash industry, the truth is waste disposal is increasingly more expensive. Items not recycled mean landfill deposition and, subsequently, shortening of the useful life of landfills plus higher charges to haulers, which eventually passes these costs on to the residents and businesses. For example, there are several multi-family complexes within Orange County that do not offer recycling services to their tenants, and it's this environment that generates the "dirty trash", that is, recyclable materials co-mingled with dirty disposable trash. While overseas markets like China, Indonesia, Vietnam, and India formerly accepted bales that included some dirty trash⁵, current domestic and foreign contamination standards require more sorting and cleaning of recyclables.

In Orange County, cities each contract exclusively with one commercial hauler who processes waste and recyclable items within their municipalities for both residential and commercial customers. OCW&R splits the unincorporated areas of Orange County into Franchise Areas (FA) and contracts with a range of commercial haulers to service those areas. Non-exclusive contracts are common to allow residents and commercial customers to contract for pickup of construction demolition waste with the hauler of their choice. The Grand Jury found that rates

⁵ Material containing unacceptable levels of contamination?

vary widely among the municipalities studied. Table 2 shows the current rates from lowest to highest for residential and selected commercial services. Several trends are evident:

- Waste Management and CR&R tend to charge lower rates with Republic charging the highest for both residential and commercial customers.
- Larger cities with a greater population of residents tend to pay more even if serviced by Waste Management (i.e. Santa Ana).
- FA benefit from OCW&R's ability to contract with a variety of commercial haulers to offer among the lowest commercial rates to businesses in those FA areas.
- A majority of cities investigated by the Grand Jury do not comply with the multi-family recycling requirements of AB 341 (i.e. separate bins for recyclables).
- Most cities offer some form of senior discounts.
- All offer roll out service for disabled residents.

Table 2. Selected rates for service as of March 16, 2020

Entity	Hauler	Residential Rate per month	Entity	Hauler	Commercial Rate per month
Irvine	Waste Mgmt.	\$12.48	Orange	CR&R	\$65.90
Mission Viejo	Waste Mgmt.	\$14.71	Mission Viejo	Waste Mgmt.	\$79.54
Dana Point	CR&R	\$16.03	Irvine	Waste Mgmt.	\$116.16
FA2 (Brea Islands)	CR&R	\$16.48	Dana Point	CR&R	\$120.15
FA5 (OPA)	Waste Mgmt.	\$17.43	FA1	CR&R	\$125.46
FA5 (EI Mod.)	Waste Mgmt.	\$17.43	FA2 (Brea Islands)	CR&R	\$125.46
FA 6,7,8	Waste Mgmt.	\$17.43	FA2 (Placentia)	Republic	\$125.46
FA 9	CR&R	\$17.43	FA3 (Orange)	CR&R	\$125.46
Orange	CR&R	\$17.47	FA3 (Stanton)	CR&R	\$125.46
FA3 (Orange)	CR&R	\$17.76	FA5 (OPA)	Waste Mgmt.	\$125.46
Buena Park	Park Disposal	\$18.37	FA5 (Canyons)	Waste Mgmt.	\$125.46
FA1	CR&R	\$18.89	FA5 (EI Mod.)	Waste Mgmt.	\$125.46
FA3 (Stanton)	CR&R	\$20.10	FA 6,7,8	Waste Mgmt.	\$125.46
Anaheim	Republic	\$21.62	FA 9	CR&R	\$125.46
Huntington Beach	Republic	\$21.83	Santa Ana	Waste Mgmt.	\$145.05
Santa Ana	Waste Mgmt.	\$21.90	Brea	Republic	\$153.24
Brea	Republic	\$21.97	Buena Park	Park Disposal	\$155.45
FA2 (Placentia)	Republic	\$22.52	Anaheim	Republic	\$167.57
Garden Grove	Republic	\$23.47	Huntington Beach	Republic	\$178.19
FA5 (Canyons)	Waste Mgmt.	\$25.52	Garden Grove	Republic	\$180.89

Waste Management and Environmental Service Providers – Industry Innovations

Major recycling legislation did not specify the methods or means to meet imposed recycling mandates. As such, cities in Orange County typically rely upon commercial waste haulers to develop workable solutions to pick up waste and recyclable material from residences and businesses within their respective jurisdictions, and in conjunction with the provider, to develop and implement local recycling programs. Some cities have a robust recycling plan that provides residents with bins for waste management. Separate bins for recyclables, trash and green waste. This enables recyclables to go directly to a dedicated MRF (otherwise referred to as a “clean” MRF) and the trash and green waste directly to the landfill. When separate bins are not offered, and sorting does not occur by the customer, all waste is put into one “trash” bin then collected and delivered to a “dirty” MRF (one that accepts unsorted material) where it is sorted and either recycled or sent to a landfill.

Over long periods, cities and OCW&R relied on provisions in long-standing agreements that required private trash companies to meet any emerging recycling legislative demands. The waste industry responded by developing proprietary technology to better sort and recycle solid waste, and recently developed new technology to collect commercial organic waste.

The processing and separating of solid waste required significant private sector capital investment and technological advancement with the creation of the MRF. The MRF is a facility that receives commingled materials and then uses a combination of equipment and manual labor (pickers) to separate and densify materials in preparation for shipment downstream to recyclers of the particular materials recovered. The recovered materials include ferrous metals, aluminum in all its shapes, polyethylene terephthalate (PET) and high-density polyethylene (HDPE) plastics, and mixed paper. The MRF has become a key component of residential and commercial single-stream recycling programs. The Waste Management MRF visited by the Grand Jury makes a concerted attempt to find as many outlets for recyclables as they can. In fact, the Grand Jury found MRFs are exceeding the mandates in AB 341 by at least 10% (required 75% by year 2020). One facility alone recycles 170 thousand tons from residential collections, and 12,750 tons from commercial gatherings per month.

During the visit to a local MRF, the Grand Jury witnessed how its operations struggled with a variety of unwanted materials such as plastic bags, large objects and waste, all of which increased the need for manual sorting, and which increases inefficiencies for MRF operators. As explained by MRF operations personnel, proper and better sorting by customers significantly increases efficiency and ultimately saves time and money. The dirtier the customer’s waste, the

more it costs to process it. Costs associated with hiring more workers to sort unwanted and nuisance articles is a major bottom-line factor, especially for many haulers⁶.

Recycled materials recovered from MRF's are eventually sold to domestic or foreign manufacturers. Most of the cities' contracts allow the haulers to retain recycling commodity profits to help offset their operating costs and, in turn, help keep waste rates down. Per CalRecycle, "California collected 44 percent of its solid waste for recycling and exported about two-thirds of that material to foreign countries for recycling and remanufacturing. This reliance has made California (and many other states and nations) vulnerable to fluctuating global commodity markets. In 2016, we exported 15 million tons of recyclable materials and 62 percent of that material was shipped to China. In 2017, China announced National Sword, which banned 24 recyclable materials from entering the country (including unsorted mixed paper and plastic), limited contamination to 0.5 percent, and increased enforcement inspections. Other Southeastern Asian countries have introduced similar import bans to aim for cleaner materials. As a result, solid waste facilities and transfer stations in California are having a hard time moving once easily exported materials. The need for a robust domestic recycling infrastructure has never been more relevant."

In the face of declining markets and lower prices for the materials they sell, such as has been experienced in recent years due to tightening import restrictions by China, waste haulers are pursuing alternate foreign and domestic markets. Should such markets not emerge, then the financial impact could negatively affect city and county contract costs that ultimately lead to higher waste rates and increased landfill rates.

State Reporting and Local Contract Auditing

In 1989, the California Integrated Waste Management Act (AB 939) established a state agency, now known as CalRecycle, to direct public attention to an increasing waste stream and decreasing landfill capacity and to administer mandates to reduce waste being disposed. As part of the requirements of AB 939, jurisdictions were to report to CalRecycle on an annual basis about local recycling, reuse, and the reduction of waste within their boundaries.

Those cities interviewed by the Grand jury indicated they use the landfill data provided by their contracted haulers, confirmed by the county landfill operator reports from OC Waste and Recycling, and other recycling information provided by the waste service provider to produce the mandatory reports sent to CalRecycle. City and county contract language allow local jurisdictions to audit contracts and conduct route inspections to verify the accuracy and legitimacy of the data and information provided by the hauler.

⁶ Laguna Beach Independent: August 6, 2018. Gabrielle Mix.

Since cities and the county have consistently complied with CalRecycle reporting requirements, the Grand Jury found that local jurisdictions were content with their contractors' overall performances based upon a review of reports submitted by the contractor. Consequently, no contract reviews or operational inspections are completed nor was documentation available for this Grand Jury to review. The Grand Jury believes best business practices dictate local jurisdictions should:

- Go out for competitive bids and negotiate shorter contract lengths as well
- Conduct periodic reviews or audits of their waste contracts
- Conduct random route inspections of their contracted waste hauler's residential and commercial pick-up services
- Periodically visit contractor MRFs to meet with operational management to review documentation and verify the disposition of recycling materials.

Waste Management Providers Current Recycling Programs

Republic Services

Of the various programs reviewed by the Grand Jury for this report, the recently launched program (2019) by Republic Services stands out for its simplicity and ability to galvanize improvements to the recycling efforts. Entitled "Empty, Clean & Dry" this consumer education program emphasizes three components⁷:

- **EMPTY:** Remove any remaining food or liquid contents from the recyclable item before placing it in a recycling container;
- **CLEAN:** Lightly rinse the recyclable item with only a small amount of water to remove any remaining residue; and
- **DRY:** Gently shake out any excess water or let the recyclable item air-dry before placing it in a recycling container.

Although almost anything can potentially be recycled, the Republic Services lists the most common contaminating items as follows:

- Ropes and cordage
- Chains
- Batteries
- Diapers
- Latex gloves
- Food
- Clothing

⁷ America Recycles, <https://www.prnewswire.com/>

- Cell phones
- Styrofoam
- Hard cover books
- Toys

Missing from this list are single use plastic bags, which are hard to recycle and damaging to sorting equipment.

Waste Management

The programs offered by Waste Management include various flyers and newsletters explaining what is recyclable and what is not. Plastic shopping bags are not even addressed in the material the Grand Jury reviewed, leaving the resident with unanswered questions.

CR&R

Similar to the offerings of Waste Management, CR&R also produces flyers and billing inserts containing recycling information. Similar to the Waste Management material, the subject of recycling single use plastic bags is not addressed.

Public Education – Changing Behavioral Habits

Since 1989, cities and the County have contractually required private waste service providers to implement a variety of programs to address waste disposal including curbside recycling, commercial recycling programs, and organics collection. In the years since the passage of major recycling laws, the changes in the behavioral habits of citizens on properly sorting household waste may best be attributable to increased education. For comprehensive information on what can be recycled as well as how recyclable various plastics are, please see the Appendix.

The legislative mandates put upon local jurisdictions were meant to develop and provide an educational process to inform the public on the proper and best ways of sorting waste. In reviewing cities and county contracts, and as confirmed from interviews conducted, the Grand Jury generally found existing agreements delegated the bulk of such obligations to their respective waste service providers. A review of recycling education material produced and provided by waste companies showed they regularly send out notices on services and informational materials, particularly waste sorting, to its customers. The waste companies have websites that highlight recycling. They are also actively engaged in community relations, including: attending and supporting community events to promote recycling, performing as guest speaker to events (i.e., schools), offering and conducting tours of their recycling facilities, and providing regular quarterly newsletters to customers. The Grand Jury noted that recycling instructions were virtually non-existent on the recycle bins themselves. Cities and the County generally inform citizens about recycling via their respective websites, but they rely mainly on their contracted waste haulers to educate residential and commercial customers about recycling requirement updates, and to promote recycling through community relations efforts.

CalRecycle Educational Programs

The Education and the Environment Initiative (EEI), was signed into law in 2003 and required the creation of a standards-based curriculum to bring environmental literacy into California's K-12 schools. The EEI curriculum consists of 85 K-12 units that teach science and history-social science standards. By addressing 15 environmental topics, the Grand Jury sees this program as more of a general awareness of the environment since recycling tends to get lost in the plethora of global climate change, water, environmental sustainability and similar topics.

Rather than the EEI curriculum, a more directed approach to recycling for children are three newsletters that were originally published in 2009 and republished on the CalRecycle website on July 19, 2018:

- 3 Rs Edition: RecyCool Planet Newsletter
- Glass Edition: RecyCool Planet Newsletter
- Plastic Edition: RecyCool Planet Newsletter

Each edition has useful recycling information presented in an interactive way that should engage children in the recycling process. The Grand Jury encourages municipalities to utilize these materials in their local school districts.

Plastic Shopping Bags—the Achilles Heel of Recycling

The convenience of plastic shopping bags makes them a favorite mode of carrying not only grocery items but also takeout food, clothes, home repair goods, and many other items needed to be carried without fear of the bags tearing, unlike traditional heavy paper grocery bags.

The passage of Proposition 67 in 2016 led to the banning of single use carry out bags in California. Grocery stores offered incentives (sometimes called “bag points”) to encourage customers to bring their own reusable bags when shopping. Although subject to possible fines, single use carry out bags were still offered by most grocery stores and merchants on a requested basis until very recently.

With the advent of the COVID-19 pandemic and the attendant behavior changes mandated by government officials, Governor Newsom issued Executive Order N-54-20 that reinstated the use of single use plastic bags for 60 days and prohibited the bagging of groceries in bags brought in by the customer (although the customer could bag their own groceries in their reusable bags). The upshot of this change is that more plastic bags will be used in the near future.

Although according to industry sources, plastic bags can be recycled, they require more effort to do so. Specifically, the Grand Jury found that the MRF we toured had to halt their sorting line every hour or so to remove the plastic bags that became entangled in the machinery (specifically referred to as “star screens” in the industry). The excellent recycling guide offered by OCW&R

(<https://ocrecycleguide.com/RecycleGuide/AZGuide>) recommends taking plastic bags to grocery or other retailers that offer recycling services.

Given the difficulty of recycling plastic bags through the MRFs, it is the Grand Jury's recommendation that municipalities devote more effort to educating their residents about how to dispose of these single use plastic bags so that recycling efforts can be devoted to sorting items, rather than cleaning sorting equipment.

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. In nine of the ten cities investigated, the waste hauler has been the sole source provider to their respective city(s) anywhere from 39 to 72 years. Where there is an opportunity for service providers to compete, there is an opportunity for competitive bidding, which may result in improvements in cost and performance.
- F2. The labeling on residential bins are not always legible or have *comprehensive enough* instructions laminated or otherwise made a part of the lid, especially with regards to single use plastic shopping bags. Education and outreach efforts need to be reinforced as often as possible and a visual reminder on the recycle container will help alleviate confusion.
- F3. Orange County Waste and Recycling as well as the waste haulers provide helpful recycling education to the public where contractually required to do so. It is the Grand Jury's view that most cities delegate much of the customers/public education efforts to the waste haulers. Contracts indicate both parties are responsible for educating the public.
- F4. Cities are not in compliance with AB 341 mandates with respect to providing recycling containers for multi-family units.

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 here, the 2019-2020 Orange County Grand Jury makes the following recommendations:

- R1. All cities and county entities that do not have a contract review process in place should establish one to ensure regular reviews of service contracts are performed and that contract terms are still relevant as legislative changes are enacted. Serious consideration should be given to shortening the length of contracts to facilitate opportunities for competitive bidding where feasible. (F1)
- R2. Municipalities should ensure that recycle bins be labeled with comprehensive recycling instructions to facilitate proper sorting of waste (F2 and (F3).
- R3. Cities, that have not already do so, should implement the requirements of AB 341 as they pertain to multi-family recycling programs. Additionally, such programs need to be closely monitored by city contract administrators rather than relying solely on waste haulers to fulfill the mandates (F4).

COMMENDATIONS

In addition to having among the lowest rates for both residential and commercial trash service, the city of Irvine is one of only two interviewed cities with an aggressive multi-family recycle program. Further, they are the only interviewed city that does not charge commercial customers for servicing their recycling bins. The Grand Jury commends the city of Irvine for their commitment to recycling.

For having a comprehensive and well-publicized organics residential recycling program in place full two years before required to do so by SB 1383, the Grand Jury commends the city of Orange.

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 or 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....”

§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 *California Penal Code Section 933.5* are required from:

Findings

County of Orange Board of Supervisors	F2,4
City councils of the following cities:	
City of Anaheim	F1,2,3,4
City of Brea	F1,2,3,4
City of Buena Park	F1,2,3,4
City of Dana Point	F1,2,3
City of Garden Grove	F1,2,3,4
City of Huntington Beach	F1,2,3,4
City of Irvine	F1,2,3
City of Mission Viejo	F1,2,3,4
City of Orange	F2,3,4,
City of Santa Ana	F1,2,3,4

Recommendations

County of Orange Board of Supervisors	R1,2,3
City councils of the following cities:	
City of Anaheim	R1,2,3
City of Brea	R1,2,3
City of Buena Park	R1,2,3
City of Dana Point	R1,2
City of Garden Grove	R1,2,3
City of Huntington Beach	R1,2,3
City of Irvine	R1,2
City of Mission Viejo	R1,2,3
City of Orange	R1,2,3
City of Santa Ana	R1,2,3

GLOSSARY

Hazardous Waste - Speaking in general terms, hazardous wastes are solid wastes that are toxic, ignitable, reactive, or corrosive according to Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations.

Household Hazardous - Waste includes paint, antifreeze, used motor oil, batteries, pesticides, caustic cleaners, needles, fluorescent light bulbs, medications, and other items that may present handling problems or other hazards if they are left in the solid waste stream.

Integrated Waste Management - Managing waste by multiple techniques to achieve solid waste and resource conservation goals. The techniques may include waste reduction, reuse, recycling, composting, transformation, disposal to landfills, and other means.

Municipal solid waste or MSW - "Municipal solid waste" or "MSW" means all solid wastes generated by residential, commercial, and industrial sources, and all solid waste generated at construction and demolition sites, food-processing facilities, and treatment works for water and waste water, which are collected and transported under the authorization of a jurisdiction or are self-hauled. Municipal solid waste does not include agricultural crop residues (SIC Codes 071 through 0724, 0751), animal manures (SIC Code 0751), mining waste and fuel extraction waste (SIC Codes 101 through 1499), forestry wastes (SIC Codes 081 through 0851, 2411 and 2421), and ash from industrial boilers, furnaces, and incinerators.

Organic waste - "Organic waste" means solid wastes originated from living organisms and their metabolic waste products, and from petroleum, which contain naturally produced organic compounds, and which are biologically decomposable by microbial and fungal action into the constituent compounds of water, carbon dioxide, and other simpler organic compounds. Sometimes called **biodegradable waste**.

Processed Green Material or PGM – consists of yard wood wastes that are dried, crushed, shredded, and sorted. These yard wastes should not contain grass clippings or leaves, which compost quickly and can cause odor violations.

Recycling - Using waste as material to manufacture a new product. Recycling involves altering the physical form of an object or material and making a new object from the altered material.

Solid wastes - Discarded or abandoned materials. Solid wastes can be solid, liquid, semi-solid or containerized gaseous material. For regulatory purposes, **hazardous waste** is a subset of solid waste.

Waste - Objects or materials for which no use or reuse is intended.

Source: CalRecycle

ACRONYMS

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

AB	Assembly Bill
ADC	Alternative Daily Cover
CalRecycle	California Department of Resources Recycling and Recovery
COVID-19	Corona Virus Disease, 2019-2020
EI	Education and the Environment Initiative
EPA	Environmental Protection Agency
FA	Franchise Areas
GHG	Green House Gas
HDPE	High-Density Polyethylene
IWMA	Integrated Waste Management Act
MCRM	Mandatory Commercial Recycling Measure
MRF	Material Recovery Facility
OCW&R	Orange County Waste & Recycling
PET	Polyethylene Terephthalate
PGM	Processed Green Material
PRC	Public Resources Code
SB	Senate Bill
SRRE	Source Reduction & Recycling Element

APPENDIX





In compiling this report from various credible sources, one of the Grand Jury's goals was to be able to provide a comprehensive recycling guide to the readers of this report. The website below containing a list of recycling options from OCW&R is very complete and can be accessed directly at <https://ocrecycleguide.com/RecycleGuide/AZGuide>.

The Grand Jury acknowledges all efforts to inform and educate the public on matters of what is trash and what is reusable are necessary and important, though evolving conditions are changing with every passing day. From the grammar schools to the universities, to community recycling or retail programs, and through general education spots on television and in print – the more everyone knows and appreciates our concern for the future, the better our society will benefit.

1. Recyclable plastic types by recycling symbol number



Plastic products are typically labeled with a number surrounded by the recycling symbol. These numbers and labels identify both the type of resin used to make the plastic and the products' recyclability. Associated with the different types of resin are potential health risks. The following table summarizes seven different types of commonly used plastics, product examples, recyclability, and potential health risks.


USED FOR	RECYCLABILITY	HEALTH	NOTES
PLASTIC #1 - POLYETHYLENE TEREPHTHALATE (PET)			
 <ul style="list-style-type: none"> soft drink, water, and other beverage bottles detergent and cleaning containers peanut butter and other food containers and bottles 	PET is recycled into: new bottles, polyester for fabrics and carpet, fill for bumper cars and fiberfill for sleeping bags and jackets.	No known health issues.	PET is one of the most easily recycled plastic.
PLASTIC #2 - HIGH DENSITY POLYETHYLENE (HDPE)			
 <ul style="list-style-type: none"> milk and water jugs laundry detergents, shampoo, and motor oil containers shampoo bottles some plastic bags 	Clear HDPE containers are easily recycled back into new containers. Colored HDPE are converted into plastic lumber, lawn and garden edging, pipes, rope, and toys.	No known health issues.	HDPE is easily recycled.
PLASTIC #3 - POLYVINYL CHLORIDE (PVC OR V)			
 <ul style="list-style-type: none"> clear food packaging, cling wrap detergents and window cleaner bottles some plastic squeeze bottles, cooking oil and peanut butter jars vinyl pipes shower curtains flooring, home siding, and window and door frames 	PVC is one of the least recyclable plastic due to additives. Potentially harmful substances are also created by its disposal.	Many harmful chemicals are produced in the manufacturing, disposal, or destruction of PVC including: <ul style="list-style-type: none"> Lead DEHA (di(2ethylhexyl)adipate) Dioxins Ethylene dichloride Vinyl chloride Effects of exposure to these chemicals may include: decreased birth weight, learning and behavioral problems in children, suppressed immune function and disruption of hormones in the body, cancer and birth defects, genetic changes.	Harmful chemicals created as a byproduct of PVC can also settle on grassland, where they can be consumed by livestock, and accumulate in meat and dairy products that are directly ingested by us.
PLASTIC #4 - LOW DENSITY POLYETHYLENE (LDPE)			
 <ul style="list-style-type: none"> bread, frozen food, and grocery bags most plastic wraps some bottles 	LDPE is not usually recycled.	No known health issues.	While no known health effects associated with the use of this plastic are known, organic pollutants are formed during manufacturing.

Just because the recycling number on a plastic object indicates that it is potentially recyclable doesn't necessarily mean that it is. Normally, only #1 and #2 plastic bottles with narrow necks are recycled. Check to see what plastics your local waste management organization recycles. The Earth911 Web site is a good place to start your search: www.earth911.org


Smart Plastics Guide

NATIONAL GEOGRAPHIC'S
STRANGEDAYS
ON PLANET EARTH


PLASTIC #5 - POLYPROPYLENE (PP)

 <ul style="list-style-type: none"> • deli soups, syrup, yogurt and margarine containers • disposable diapers • outdoor carpet • house wrap • clouded plastic containers, e.g. baby bottles, straws 	<p>PP is not easily recycled. Differences in the varieties of type and grade, mean achieving consistent quality during recycling is difficult.</p>	<p>No known health issues.</p>	
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PLASTIC #6 - POLYSTYRENE (PS)

 <p>Rigid Polystyrene</p> <ul style="list-style-type: none"> • CD cases • disposable cutlery <p>Formed Polystyrene (Styrofoam)</p> <ul style="list-style-type: none"> • food containers • packaging • insulation • egg cartons • building insulation 	<p>Recycling PS is possible, but not normally economically viable.</p>	<p>Styrene can leach from polystyrene. Over the long term, this can act as a neurotoxin. Studies on animals report harmful effects of styrene on red-blood cells, the liver, kidney, and stomach organs¹.</p> <p>¹ US Environmental Protection Agency (1992) "Styrene". Air Toxics Website. Retrieved on 31/1/2008 from http://www.epa.gov/ttn/atw/111/styrene.htm</p> <p>Styrene can be absorbed by food, and once ingested can be stored in body fat. It is thought that repeated exposure could lead to bioaccumulation².</p> <p>² WHO International Programme On Chemical Safety. "Styrene". Environmental Health Criteria 26. Retrieved on 31/1/2008 http://www.inchem.org/documents/ehc/ehc/ehc26.htm</p>	<p>Try reusing styrofoam packing peanuts, and polystyrene cutlery where practical.</p>
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PLASTIC #7 - MIXED (OTHER)

 <ul style="list-style-type: none"> • lids • medical storage containers • electronics • most plastic baby bottles • 5-gallon water bottles • "sport" water bottles • metal food can liners • clear plastic "sippy" cups • some clear plastic cutlery 	<p>Mixed resin plastics like #7 are difficult, if not impossible, to recycle.</p>	<p>Health effects vary depending on the resin and plasticizers in this plastic that often includes polycarbonates. Polycarbonate plastic leaches bisphenol A (BPA) a known endocrine disruptor. By mimicking the action of the hormone, estrogen, bisphenol A has been found to: effect the development of young animals; play a role in certain types of cancer; create genetic damage and behavioral changes in a variety of species.</p> <p>bisphenol A is widespread—one study found BPA in 95% of American adults sampled³.</p> <p>³ Calafat, A.M., Kuklenyik, Z., Reidy, J.A., Caudill, S.P., Ekong, J. & Needham, L.L. (2005) "Urinary Concentrations of Bisphenol A and 4-Nonylphenol in a Human Reference Population" <i>Environmental Health Perspectives</i> 113: 391-395. Retrieved 31/1/2008 from http://www.ehponline.org/abstract/2004/7/34/7/34.html</p>	<p>The number of studies documenting the detrimental effects between BPA and health are increasing.</p>
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TIPS FOR USE OF PLASTIC CONTAINERS WITH FOOD

- **Avoid heating food in plastic containers.** Heat can release chemicals so avoid heating food in plastic containers. For the same reason, only drink cold liquids from plastic containers.
- **Wash plastic containers in mild detergents.** Harsh detergents help liberate chemical from plastics making the container much more likely to leach chemicals into food.
- **Avoid using plastic packaging where you can.** For example, bring reusable bags when grocery shopping, and your own "to-go" containers when dining out.
- **Select safe plastics for food storage.** Only use plastic containers with the recycling #1, #2, #4 and #5 for food storage. Consider switching to glass storage containers since plastic containers can leach chemicals into the environment and your food as they age and become used.



Compiled by Sea Studios Foundation www.seastudios.org
Sources: Earth911.org, Institute of Agriculture and Trade Policy, WHO International Programme on Chemical Safety, US EPA

Protecting Those Who Protect and Serve



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Protecting Those Who Protect and Serve

SUMMARY

The citizens of Orange County are protected by over 4,500 sworn law enforcement personnel from the Orange County Sheriff's Department (OCSD) and law enforcement agencies from the twenty-one cities that have their own police departments. Although every job has varying degrees of stress, law enforcement is one of the most stressful occupations in the country. During its investigation, the Grand Jury learned that public perception of law enforcement personnel is the leading cause of stress. In the aftermath of George Floyd's untimely death, public perception of law enforcement has markedly worsened and with it, the climate under which law enforcement personnel must protect and serve the citizens of Orange County.

Recognizing the impacts of stress on one's physical and mental health, both federal and state legislation was enacted in 2019 to address law enforcement mental health. In acknowledgement of the importance of peer support programs for Peace Officers, last year the California legislature unanimously passed (79-0) Assembly Bill-1117: Peace officers: peer support.¹ It was codified in California Government Code §§ 8669.1-8669.7, *Law Enforcement Peer Support and Crisis Referral Services Program* and became effective on January 1, 2020. Peer support services are available to listen, support, refer, and assist employees and family during difficult times in their personal and professional lives.

As there are many peer support groups for various occupations, the 2019-2020 Orange County Grand Jury sought to investigate the availability of those programs in the law enforcement agencies that serve the citizens of Orange County. Today, all but four law enforcement agencies in Orange County have established peer support programs with written policies.

The Orange County Grand Jury interviewed representatives of the OCSD and all city police agencies in Orange County. Although it was difficult to quantify the effectiveness of Peer Support Programs due to confidentiality concerns, the Grand Jury learned that law enforcement representatives are generally supportive of the program.

This report will focus on the importance of providing formal Peer Support Programs in all law enforcement agencies in Orange County to help manage stress inherent in law enforcement.

REASON FOR THE STUDY

It is common knowledge that law enforcement personnel (defined in statute and hereafter as Peace Officers)² have a stressful job. They are subjected to tragic situations and occurrences not normally experienced by the general public. These stress-inducing experiences can affect a

¹ https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201920200AB1117

² Cal. Penal Code § 830.1(a)

Peace Officer's performance on the job, as well as relationships off the job. For Peace Officers to be effective, focused and fully engaged, they must be provided with safety nets to support their own mental health and wellbeing. One consideration is a program to assist Peace Officers in coping with the stress of their profession. This study was undertaken to determine whether law enforcement agencies within Orange County, California, maintain programs to ensure the mental wellbeing of its Peace Officers. In addition, the Grand Jury undertook to review the variety of programs that are currently in place throughout the many agencies, and to recommend implementation of peer support and wellbeing programs to those agencies currently without them.

METHOD OF STUDY

In conducting its investigation, the 2019-2020 Orange County Grand Jury interviewed 41 Peace Officers, including representatives from each law enforcement agency, and selected representatives from each agency's Peace Officers association. The Grand Jury's investigations was limited to the law enforcement agencies identified in Figure 1 and did not include others such as the harbor patrols, universities, and other police agencies with specific assignments. Additionally, an extensive online review and document research in the area of stress of Peace Officers was conducted. The effectiveness of peer support programs to support these Peace Officers was also evaluated.

The Grand Jury also interviewed a leading expert on Peer Support Programs, who provided invaluable information for its investigation.

CITIES OPERATING THEIR OWN POLICE DEPARTMENTS		CITIES/AREAS CONTRACTED WITH ORANGE COUNTY SHERIFF'S DEPARTMENT
Anaheim	La Palma	Aliso Viejo
Brea	Laguna Beach	Dana Point
Buena Park	Los Alamitos	Laguna Hills
Costa Mesa	Newport Beach	Laguna Niguel
Cypress	Orange	Laguna Woods
Fountain Valley	Placentia	Lake Forest
Fullerton	Santa Ana	Mission Viejo
Garden Grove	Seal Beach	Rancho Santa Margarita
Huntington Beach	Tustin	San Clemente
Irvine	Westminster	San Juan Capistrano
La Habra		Stanton
		Villa Park
		Yorba Linda
		Unincorporated Areas: <u>Coto de Caza</u> , <u>Ladera Ranch</u> , <u>Las Flores</u> , <u>Rossmoor</u> , <u>Wagon Wheel Canyon</u> , <u>Trabuco Canyon</u> , <u>Rancho Mission Viejo</u>

Figure 1. Law Enforcement Agencies in Orange County Investigated

BACKGROUND AND FACTS

There are approximately 4,500 men and women in Orange County who have taken an oath to protect and service the citizens of their respective municipalities, contracted cities, and unincorporated areas. There are 21 city-operated law enforcement agencies and one regional, the Orange County Sheriff’s Department, which contracts with 13 cities and several unincorporated areas to provide law enforcement services.

In the discharge of their duties, these Peace Officers routinely place their lives and wellbeing in harm’s way every time they go to work. When responding to a call, a Peace Officer seldom knows what to expect. Many decisions a Peace Officer makes must be made quickly, decisively, and instinctively based on their training. A Peace Officer may be responding to a call of domestic violence, or a deceased person. Even worse, they may be responding to a call of a crime committed against a child. There are Peace Officers in other equally stressful areas.

During multiple interviews, the Grand Jury learned that Peace Officers in Orange County experience stress from many sources, including some not directly involved with law enforcement activities. The most frequently cited cause of stress was a negative public perception of the profession (See Figure 2). Peace Officers are acutely aware of negative perceptions from the community, their neighbors, and the general public so much so that sometimes they feel compelled not to disclose they work in law enforcement. Although the death of George Floyd occurred long after the Grand Jury’s interviews were complete, the mantras of “Defund the

Police” and “I can’t breathe” must resonate loudly in the ears of every Officer as he or she ventures out in the community every day to protect and serve. This issue will likely have a negative impact on future public perception of the police in general.

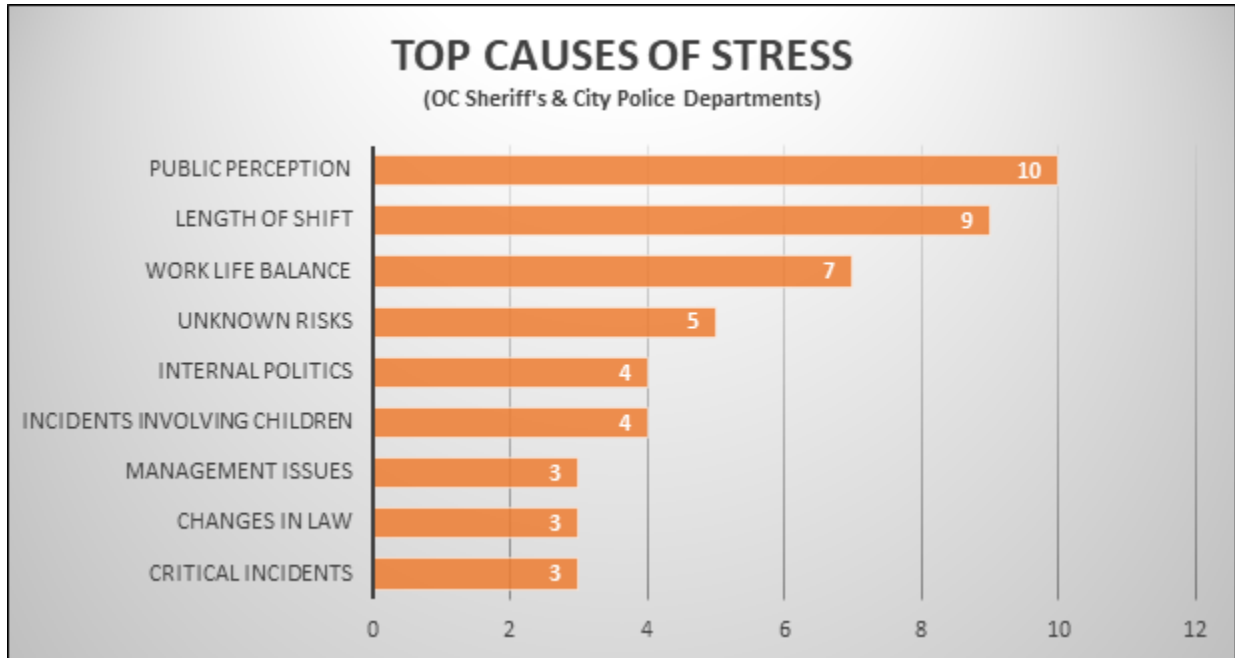


Figure 2. Top Causes of Stress

Peer Support Programs-Help is Here

In law enforcement agencies, support for personnel was recognized and provided through policies describing the procedures in a “Trauma Support Policy.” Some of these included aspects of what is now called peer support services. A California statute recognizes that “peer support services assist those affected by a critical incident in coping with critical incident stress and mitigating reactions to critical incident stress.”³ The California Peer Support Association defines peer support as follows:

Peer support is a process where a person discusses a personal issue with a non-professional, usually a friend or a co-worker. A person will select a peer support person primarily based upon trust. Most only share problems with someone considered credible, able to listen without judgments and capable of maintaining confidentiality. Peer support members have the responsibility to understand their role and its limitations. They are trained to employ active

³ Cal. Government Code § 8669.3(g)

listening skills, to avoid “solving” or taking on the person’s problems, and when appropriate, to refer the individual to professional resources.⁴

Orange County Peer Support Programs

Orange County law enforcement agencies offer various programs to support Peace Officers that span the continuum of support, ranging from informal conversations with colleagues to formal written policies.

- Orange County Association of Peer Supporters (OCAPS) provide support, training, advisement, response and resources in the aftermath of a critical incident or traumatic loss implicating law enforcement professional and families members in Orange County and surrounding areas. Peer Support Team members of participating departments have access to OCAPS resources.
- After an Officer Involved Shooting, Peace Officers must comply with their law enforcement agency’s policy. Most Officer Involved Shooting policies require three days paid-time off, psychological counseling and clearance before returning to active duty.
- After a Critical Incident (e.g. involving of a child), the agency chief may order a Peace Officer to take time off with pay and may order the Peace Officer to go through psychological counseling.
- Although an agency chief cannot order a Peace Officer to participate in a Peer Support Program, Peace Officers are encouraged to avail themselves of peer support services.
- When the Peer Support Team member considers it appropriate, Peace Officers may be referred to counseling by certified professionals through an Employee Assistance Program (EAP), which are available to all personnel without a referral.
- Some law enforcement agencies have faith-based programs that involve chaplains to support personnel in managing psychological and emotional reactions to traumatic events and stress. Chaplains are often used to support peer support teams in critical incident debriefings.
- Most law enforcement agencies report that informal peer support is always available to Peace Officers, at their discretion and sense of need, to discuss troublesome events with colleagues who know how these situations unfold and how to resolve them for the best; this could be over a cup of coffee.

⁴ <https://www.californiapeersupport.org/page-303232>

Peer Support Provided

It is important to emphasize the Peer Support Program also provides crisis stress debriefings to everyone involved in a critical incident. For example: in the case of an Officer Involved Shooting, not only is the Peace Officer provided immediate support, support is also extended to those involved with the 911 call. This includes the dispatcher taking the initial call and the crime scene investigators witnessing the aftermath of the incident. The goal of debriefing after the incident is to put everything into perspective by providing the big picture of the incident. Debriefing can be a cathartic relief of anxiety for those who participate.

Peer support team members have also been known to help other agencies within and outside of Orange County. The Grand Jury learned that in the case of the 2015 attack in San Bernardino and the 2017 North Park Elementary School shooting, the Peer Support Team provide mutual aid to their colleagues in the San Bernardino Sheriff's Department.

Some agencies have written policies in place for many years that address a peer support program that may need to be revised to provide participants with the protections of the new law. The bill AB 1117, defines a "peer support team" as a law enforcement agency response team composed of peer support team members. The bill defines a "peer support team member" as a law enforcement agency employee who has completed a peer support training course or courses pursuant to Section 8669.6. Agency selection criteria of peer support team members shall be incorporated into agency policies.

The Grand Jury learned that 18 Orange County law enforcement agencies operate with written policies. The remaining four have "ad hoc" peer support programs that are not documented in a written policy.

Acceptance of Peer Support Programs

Law enforcement agency chiefs, or their representatives, were all very supportive of having a Peer Support Program (PSP).⁵ Several said that many long-time Peace Officers would probably not use the Peer Support Program, as they were "old school," or were too "macho," subscribing to the "suck-it-up" mentality of career veterans on the force. In contrast, younger Peace Officers were more open to the program and embraced peer support efforts.

Positive Support for PSP

In a survey of two police departments and one sheriff's department in Colorado, 637 (77.9%) surveys were returned. Nearly 50% reported participation in peer support interactions, 90% of the users rated the program as "helpful or very helpful," 80% indicated they would use it again; and 90% would recommend it to others.

⁵ http://jackdigliani.com/uploads/3/4/5/1/34518973/peer_support_team_survey_report.pdf

The major reason for the popularity of the program is the inclusion of one's peers. Peace Officers feel that a fellow Peace Officer better understands them, whereas an outsider might be less understanding of the duties and stresses specific to their profession.

The Grand Jury learned police associations in Orange County were very supportive of the Peer Support Program, and encourage their members to utilize peer support when needed.

Peer Support Program is successful because it occupies a supporting niche that cannot be readily duplicated by either health plan counseling or an Employee Assistance Program. The power of the *peer* is the factor that is a constant in the support by peer support team members.

Some agencies, belong to the Orange County Association of Peer Supporters. This organization provides regional support, training, promotion, response and resources in the aftermath of a critical incident or traumatic loss impacting law enforcement personnel and family members in Orange County and surrounding areas.

Awareness of Peer Support Programs

A variety of techniques are used by city-operated law enforcement agencies and the Orange County Sheriff's Department to communicate the availability and to encourage the use of these support systems. Following are some examples:

- Information included in home mailings, including paychecks
- Brochures and posters prominently displayed in the briefing and break rooms
- Information posted on the internal websites (intranet)
- Information included in the training curriculum for new Peace Officers

Selecting Peer Support Team Members

Those who assist Peace Officers in coping with stressful incidents become part of the "Peer Support Team" and are commonly referred to as "Peer Support Team members" or "Peer Supporters." They are current sworn and non-sworn personnel who have been selected based on several criteria including but not limited to:

- Ability to maintain confidentiality
- Good communication and listening skills
- Genuinely care for the well-being of their peers
- Successful completion of required training

The new peer support statute states that agency selection of peer support members shall be incorporated into agency policy.⁶

⁶ Cal. Gov. Code, Section 8669.3(j)

During its investigation, the Grand Jury became aware of the compassionate nature of Peer Support Team members, and that they are in jeopardy themselves for burn out through the additional stress of coping with another person's problems. Team members may have a tendency to internalize the crisis they are assisting their peers to resolve. In order for team members to be effective Peer Supporters, some law enforcement agencies offered yearly counseling sessions to assist in de-stressing team members.

A provision of the newly effective peer support statute, may assist with recruiting Peer Support Team members. A provision in the law exempts peer support team members and their agencies from any liability for damages related to performing peer support services except in cases of gross negligence or intentional misconduct.⁷ These protections mean a Peer Supporter cannot be held liable if an officer responds to peer support with self-harm, property damage or other acts causing damage or injury.⁸

To avail themselves of the benefit of the newly effective peer support statute, law enforcement agencies must consult with an employee representative organization to develop and implement a program created under this the statute.⁹

Training Peer Support Team Members

Becoming a Peer Support Team member is voluntary and attracts those personalities of those who want to help others. Communication skills, especially listening and knowing when to engage, are essential traits in a good Peer Supporter. Building trust quickly, strong observation skills, sharing common experiences, and emphasizing the person's positive activities such as cooking.

In order to become a member of a Peer Support Team, formal training is required. Training generally consists of classes totalling 70-80 hours over a two-week period. The importance of confidentiality is emphasized, as this is essential to the success of the program. New members may be trained by fellow Peer Support Team members, but most go to seminars led by counselling professionals. There are many educational seminars available throughout California covering a wide variety of topics pertaining to peer support.

Protection of Confidential Communications

Peace Officers may be hesitant to use Peer Support Programs because they do not trust that what they say to a peer will be kept confidential. Confidentiality for these communications is essential

⁷ Cal. Government Code § 8669.5

⁸ State Coalition of Probation Organizations, *New California Law Supports Local Agency Peer Support Programs*, www.scopo.org, accessed 6/14/2020

⁹ Cal. Government Code § 8669.2(c)

to allow Peace Officers in crisis, whether from critical incidents or other trauma, to talk freely to Peer Supporters without fear of embarrassment, disclosure or reprisal.¹⁰

A Peer Support Program in which the team members have been trained in compliance with the newly effective peer support addresses that problem by making communications between a Peace Officer and Peer Support Team member confidential. A Peace Officer now has the right to refuse to disclose those communications, and to prevent a peer counselor from disclosing he, except in criminal proceedings, cases where the disclosure is necessary to prevent death or substantial bodily harm, for purposes of referring the Peace Office to crisis services, and in other limited circumstances. The confidentiality provisions also apply to disclosure of confidential communications to crisis hotline or crisis referral services in civil, administrative or arbitration proceedings.¹¹ These “authorized” Peer Support Programs address concerns that may make Peace Officers reluctant to speak with others about their experiences.

To qualify for confidentiality protection, a Peer Support Team member must complete a training course approved by the law enforcement agency including, but not limited to, the topics¹² below:

- Pre-crisis education
- Critical incident stress defusing.
- Critical incident stress debriefing
- On-scene support services.
- One-on-one support services.
- Consultation.
- Referral services
- Confidentiality
- Impact of toxic stress on health and well-being
- Grief support
- Substance abuse awareness and approaches
- Active listening skills
- Stress management
- Psychological first aid.

Conversations with Peer Support Team members who have not completed a peer support training course pursuant to the newly effective statute are not considered “confidential communications” and may be disclosed during a civil, administrative or arbitration proceeding.

Peer Support Funding

During its investigation, the Grand Jury learned that only four law enforcement agencies allocate a specific budget line item for Peer Support Program. A majority of all law enforcement

¹⁰ Cal. Government Code § 8669.2(c).

¹¹ Cal. Government Code § 8669.4.

¹² Cal. Government Code § 8669.6.

agencies rely on their general operating budget to absorb the cost of peer support. The Grand Jury learned that due to the lack of funding, some departments will send one team member to formal training in order to conduct in-house training for other members. This practice of “Train the Trainer” is how many team members receive training.

In light of the current rancor to “Defund the Police,” Peer Support Programs are likely to take a back seat to other funding priorities. By cruel coincidence, this is occurring at a time when the need for peer support has never been greater.

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 entitled “Protecting Those Who Protect and Serve,” the 2019-2020 Orange County Grand Jury has arrived at six principal findings, as follows:

- F1. Peer Support Programs are effective in helping Peace Officers develop healthy coping techniques for themselves and their families.
- F2. A written policy documenting each agency’s Peer Support Program helps ensure the program’s continuation after changes in staff.
- F3. The benefits in the peer support statute, effective January 1, 2020, are important to Peace Officers and Peer Support Team members.
- F4. It is important that Peer Support Team members receive periodic training.
- F5. Allocating a specific budget line item for Peer Support Programs help ensure adequate training and continuation of the programs.
- F6. Continuous communication to Peace Officers about the Peer Support Programs is important to increase awareness and use of the Peer Support Programs.

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 following four recommendations:

- R1. The 2019-2020 Orange County Grand Jury recommends that that the four law enforcement agencies without a written policy on their Peer Support Program institute a policy. (F1, F2)
- R2. The 2019-2020 Orange County Grand Jury recommends that all Peer Support Programs be in compliance with the peer support statute. (F3)

- R3. The 2019-2020 Orange County Grand Jury recommends that Peer Support Team members receive periodic training and that completion of training is documented. (F4)
- R4. The 2019-2020 Orange County Grand Jury recommends that all law enforcement agencies allocate a specific budget line item for their Peer Support Program. (F5)

COMMENDATIONS

The Grand Jury commends the following law enforcement agencies for their robust programs of peer support and community outreach to counter the public's negative perception of Peace Officers, as well as its extraordinary efforts to ensure the mental health and wellbeing of its Peace Officers, as well as the Peer Support Team Members:

Peer Support Programs

- Anaheim Police Department
- Laguna Beach Police Department
- Dr. Heather Williams, formerly with the Orange County Sheriff's Department, for her invaluable contribution to peer support programs.

Community Outreach Programs

- Several city law enforcement agencies hold "Coffee with a Cop" at different locations in their city.
- Westminster Police Department holds "Corvettes with a Cop."
- La Palma Police Department has "Checkout with a Cop."
- Garden Grove Police Department holds "Run with a Cop".
- Laguna Beach Police Department has a number of programs, i.e. "Hip Hop with a Cop" at the high school and visits with the Boys and Girls Club.

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

Orange County Sheriff-Coroner F1, F3, F4, F5, F6

City councils of the following cities: F2
Brea, Cypress, La Palma, Westminster

City councils of the following cities: F1, F3, F4, F5, F6
Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Garden Grove, Huntington Beach, Irvine, La Habra, La Palma, Laguna Beach, Los Alamitos, Newport Beach, Orange, Placentia, Santa Ana, Seal Beach, Tustin, Westminster

Recommendations

Orange County Sheriff-Coroner R2, R3, R4

City councils of the following cities: R1
Brea, Cypress, La Palma, Westminster

City councils of the following cities: R2, R3, R4
Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Garden Grove, Huntington Beach, Irvine, La Habra, La Palma, Laguna Beach, Los Alamitos, Newport Beach, Orange, Placentia, Santa Ana, Seal Beach, Tustin, Westminster

GLOSSARY

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

AB	Assembly Bill
EAP	Employee Assistance Program
OCAPS	Orange County Association of Peer Supporters
OCSD	Orange County Sheriff's Department
PSP	Peer Support Program



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