



County of Orange

County Executive Office

August 25, 2020

Honorable Kirk H. Nakamura
Presiding Judge of the Superior Court of California
700 Civic Center Drive West
Santa Ana, CA 92701

Subject: Response to Grand Jury Report, "The Transportation Corridor Agencies – Are They Taking Their Toll On Orange County?"

Dear Judge Nakamura:

Per your request, and in accordance with Penal Code 933, please find the County of Orange response to the subject report as approved by the Board of Supervisors. The respondents are the Orange County Board of Supervisors and the County Executive Office.

If you have any questions, please contact Lala Oca Ragen of the County Executive Office at 714-834-7219.

Sincerely,

Frank Kim
County Executive Officer

Enclosure

cc: Orange County Grand Jury
Lala Oca Ragen, Assistant Deputy Chief Operating Officer, County Executive Office



Responses to Findings and Recommendations
2019-20 Grand Jury Report:

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

SUMMARY RESPONSE STATEMENT:

On June 29, 2020, the Grand Jury released a report entitled “The Transportation Corridor Agencies – Are They Taking Their Toll On Orange County?” This report directed responses to findings and recommendations to the Orange County Board of Supervisors. The responses are below:

FINDINGS AND RESPONSES:

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.

Response: Partially disagrees with the finding. The SJHTCA is not involving itself in planning efforts which are “probably” outside the purview of their charter, since their efforts concern the SR-73, which is within the purview of their 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.

Response: The Grand Jury Report does not contain sufficient information and data upon which the Board of Supervisors can agree or disagree with this finding.

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.

Response: Partially disagrees with the finding. The characterization that the F/ETCA has fulfilled “the bulk” of its original mandate is inaccurate, as projects remain in

progress at this time, as acknowledged by the report and this finding. Additionally, TCA will continue to partner with the County in development and execution of Alternative 22.

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.

Response: Partially disagrees with the finding. The TCA founding documents envision that ongoing activities would occur. The Joint Powers Agreements for F/ETCA and SJHTCA both state as part of their purpose that they would, “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).”

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.

Response: Partially disagrees with the finding. Given that TCA’s specific statutory mandate differentiates them from OCTA and/or Caltrans, it cannot be said that the activities that TCA has undertaken are 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.

Response: Agrees with the finding.

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.

Response: The Grand Jury Report does not contain sufficient information and data upon which the Board of Supervisors can agree or disagree with this finding.

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.

Response: Disagrees wholly with the finding. Based on the evidence in this report, it is not clear that TCA employs political and public relations consultants for the narrow purpose stated in this finding.

F9. The TCA has a capable in-house communications staff as evidenced by the excellent COVID-19 Communications Plan.

Response: The Grand Jury Report does not contain sufficient information and data upon which the Board of Supervisors can agree or disagree with this finding. The “COVID-19 Communications Plan” is not attached to this report.

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.

Response: The Grand Jury Report does not contain sufficient information and data upon which the Board of Supervisors can agree or disagree with this finding.

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.

Response: Disagrees wholly with the finding. No evidence demonstrating a conflict of interest issue under the law is presented in this report.

F12. Elected officials who have voiced opposition to the TCA have been subjected to negative information campaigns by TCA proponents.

Response: Disagrees wholly with the finding. No evidence supporting this assertion is presented in this report.

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.

Response: The Grand Jury Report does not contain sufficient information and data upon which the Board of Supervisors can agree or disagree with this finding.

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.

Response: Disagrees partially with the finding. While the report suggests that some BoD members showed limited knowledge of the agreements and codes that govern the creation of TCA, there is no evidence that such limited knowledge contributed to the potential for poor management and/or leadership.

RECOMMENDATIONS AND RESPONSES:

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))

Response: The recommendation will not be implemented because it is not warranted or is not reasonable. On August 25, 2020, the Board of Supervisors, will consider and review the findings of this report at a public meeting. Any further action to investigate the issues raised is a policy matter for the Board of Supervisors to consider as part of the August 25, 2020 meeting. The Board of Supervisors is not the governing Board of the TCA and while certain members of the Board of Supervisors sit as representatives on the BoD of the TCA, they cannot and do not have the authority to, without action by the TCA BoD, remediate the issues raised in this report or issue a directive that TCA must follow.