

OnTrac and the City of Placentia: Funding, Favoritism, and Fairness

1. Summary

Between 1997 and 2004, the City of Placentia spent \$52.7 million on a project to separate at grade rail/auto intersections and move the trains below grade (OnTrac). The money represents about 10% of the estimated total cost of the project – the remainder was to come from state and federal transportation funds. Those funds never materialized, leaving the city to dig deeper and deeper into its own funds.

The grand jury became interested in the City of Placentia's trials with the OnTrac system through complaints and newspaper articles outlining the city's problems. Because other agencies are investigating specific areas of the project, the grand jury focused on the following two areas:

- Was the purchase of a specific property under eminent domain handled fairly as an arm's-length transaction, or did favoritism cause the property to be purchased for well over its market value?
- Did the city properly use and account for various grant revenues, or were monies improperly shifted from grants to fund OnTrac?

The grand jury concluded that the eminent domain acquisition was handled fairly, and that the city did not use grant monies inappropriately.

2. Purpose of the Study

The grand jury investigated allegations that the eminent domain taking of a property on Placentia Avenue resulted in a windfall to the property owner. The city purchased the property for \$1.3 million, and the actual property appraisal was represented to be \$300,000. The jury also investigated whether the city improperly diverted grant monies to OnTrac.

3. Method of Study

The grand jury interviewed city and county employees, performed site visits and record searches, and reviewed extensive documentation.

4. Background

The City of Placentia is traversed by 60 or more trains daily, an average of about one every half hour, carrying cargo traffic from the Ports of Los Angeles and Long Beach through the Orange County Gateway. In addition, Amtrak and Metrolink use the rails. The noise, the traffic delays, and the public safety impact of having multiple intersections blocked by rail traffic already impair the quality of life in the city. By 2020 rail traffic is

predicted to grow to 150 trains a day or an average of about one every 11 minutes. The city therefore decided to explore the possibility of moving rail traffic below street level.

At the time of the initial discussions in 1997, the city council believed that there would be federal and state transportation funds available to cover most costs of reconstructing the intersections. OnTrac was created in 2000 to obtain the funding and to coordinate and subcontract engineering studies and eminent domain takings. More than \$28 million in federal and state funds were quickly secured, and the project gathered momentum.

Between the economic downturn in 2000 and the negative economic repercussions of 9/11 in 2001, transportation money evaporated from both the federal and state budgets. The City of Placentia, having begun acquiring property and letting contracts for engineering and construction, made the decision to go ahead with the project, hoping that the federal and state money would materialize. As the costs of funding the project grew, the city diverted more and more funds from other areas, spending more than \$27 million in grant funds and borrowed money.

Finally, in 2002, the city considered 1) outsourcing the police department and 2) cutting some services. This led to a public outcry, and, in the 2004 city council election, OnTrac funding became a key issue.

4.1 Eminent Domain Property

One of the properties taken through the eminent domain process, in order to provide a turnout for the trains (shoofly) during construction of an underpass, was a property on Placentia Avenue. The firm had been in business there since 1966 as an equipment rental enterprise. It was a sole proprietorship, and some time later a large builder's supply warehouse opened across the street. The grand jury received information alleging that at the time of transfer of ownership in September of 2002, the business was in decline. In addition, it was alleged that the site had environmental issues because it used to be a gas station. It was also alleged that because the business owner was a former city council member, he had received a large premium over the true value of the property.

The grand jury visited the site and reviewed the eminent domain paperwork, as well as all available information on the history of the subject property. Placentia retained a well-known eminent domain consultant to develop a value for the property, along with several other properties. The consultant based its recommended compensation on three factors:

- appraised value of land and improvements
- relocation expense
- loss of goodwill

The consultant's appraised value of land and improvements was \$524,285.

The relocation expense was estimated at \$75,000, but the consultant was unable to find a suitable relocation site. An equipment rental business is considered a "dirty" business by many cities and would be relegated to an industrial area. Its location across from the builder's supply warehouse was actually beneficial to their business, according to income

figures. Segregating the business in an industrial area would isolate them from their customer base. Indeed, no location could be found in Placentia, Fullerton, or Anaheim; Santa Ana was the nearest city that would accept the business.

The estimate of the loss of goodwill was subcontracted to a professional goodwill appraiser. It estimated the lost goodwill at \$300,000. Additionally, estimated litigation expenses of \$90,000—a not infrequent expense with eminent domain proceedings—were added to the valuation. Therefore the eminent domain consultant recommended a total purchase price to the city of \$989,285.

The property owner disagreed with the estimates and insisted the business would not be able to be relocated and re-established. The city and the owner held a settlement conference, and the city agreed to completely buy out the business and the goodwill. The chart below shows the components of the agreement:

	Original Offer	Negotiated Agreement
Land and improvements	\$524,285	\$625,770
Fixtures and equipment	--	93,000
Relocation exposure	75,000	--
Litigation expenses	90,000	--
Loss of goodwill	300,000	581,230
Total	\$989,285	\$1,300,000

Because the agreement settled all claims, litigation expenses were avoided. Although the final number was some 30 percent higher than the city’s initial offer, the consultant recommended the city accept the offer, pointing out:

our relocation agents could not find a suitable location for this business. . . . The bottom line here is that relocating this business would be impossible—leaving the City open to a complete loss of business goodwill claim.

The grand jury concluded that the purchase price was reasonable and the sale was conducted without favoritism. However, during the normal investigation of this site, a Phase I environmental assessment was conducted by an outside firm. It determined there was a probability there were unremediated underground storage tanks at the property and recommended a Phase II environmental assessment be conducted.

The grand jury was concerned that the city chose not to conduct a Phase II environmental assessment. Although there is no record of underground tanks with any regulatory agency, there is evidence of tanks in the county assessor’s records, and it is unclear whether they had been removed. The grand jury believes the city was short-sighted in not following the recommendation of its own environmental consultant to conduct a Phase II assessment. If tanks had been found, the city’s purchase price might have been reduced, and the city could have avoided liability for future cleanup.

4.2 Grant Money Diversion

As reports of Placentia's borrowing increased, the grand jury was concerned that monies might have been improperly diverted from federal and state grants to backfill the city's budget. The jury reviewed 1999-2003 disbursements for the following programs:

- Asset Seizure fund
- Air Quality fund
- COPS grants

The grand jury has concluded that monies were disbursed in accordance with the rules of the granting agencies and no money was improperly diverted. However, it did not conduct a forensic audit and does not feel qualified to affirm that accounting procedures met all public finance requirements.

In fact, the most troubling accounting practice discovered is that a city employee approved his own invoices. This gave him one of the two signatures required for payment. However, since other entities are responsible for investigating potential conflicts of interest, the grand jury did not pursue the issue.

5. Findings

Under California Penal Code Sections 933 and 933.05, responses are required to all findings. The 2004-2005 Orange County Grand Jury has arrived at the following finding:

- 5.1 *Phase II Assessment:*** The City of Placentia did not conduct a Phase II assessment as recommended by their environmental consultant, which may have reduced the purchase price of the property and may have revealed an environmental hazard.

Responses to *Finding 5.1* are required from the Placentia City Council.

6. Recommendations

In accordance with California Penal Code sections 933 and 933.05, each recommendation will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Officer of the Superior Court. Based on the finding, the 2004-2005 Orange County Grand Jury makes the following recommendation:

- 6.1 *Phase II Assessment:*** The city should reconsider having a Phase II assessment performed on the property, as unremediated underground storage tanks may be an environmental hazard. (See Finding 5.1.)

Responses to *Recommendation 6.1* are required from the Placentia City Council.

7. Bibliography

1. Various documents from the County Assessor's Office
2. City Council minutes
3. Citizens for a Better Placentia
4. Site visits
5. Orange County Gateway: An OnTrac Project
6. Newspaper articles